RNI No. MAHBIL /2009/31744
Reg. No. MH/MR/South-318/2013-15

सत्यमेव जयते

महाराष्ट्र शासन राजपत्र

भाग एक–ल

वर्ष ५, अंक ४४] गुरुवार ते बुधवार, जानेवारी २-८, २०१४/पौष १२-१८, शके १९३५ [पृष्ठे ४०, किंमत : रुपये २३.००

प्राधिकृत प्रकाशन

(केंद्रीय) औद्योगिक विवाद अधिनियम व मुंबई औद्योगिक संबंध अधिनियम यांखालील (भाग एक, चार-अ, चार-ब आणि चार-क यांमध्ये प्रसिद्ध केलेल्या अधिसूचना, आदेश व निवाडे यांव्यतिरिक्त) अधिसूचना, आदेश व निवाडे.

BEFORE SHRI U. R. PATIL, PRESIDENT, INDUSTRIAL COURT MAHARASHTRA AT MUMBAI

REVISION APPLICATION (ULP) No. 174 OF 2001 IN COMPLAINT (ULP) No. 188 OF 2001.—Narayan D. Yadav, C/o. Pandurang M. Yadav, LIG-1st, Room No. B-14, Sector-2, Kalamboli, Navi Mumbai 400 218.—*Applicant—Versus*—(1) The General Manager, BEST Undertaking, BEST Bhavan, Colaba, Mumbai 400 001, (2) Mr. Prakash H. Patil, Senior Transport Officer (Dharavi), BEST Depot (Dharavi).—*Opponents.*

In the matter of Revision u/s. 44 of the M.R.T.U. & P.U.L.P Act, 1971.

CORAM.— Shri U. R. Patil, President.

Appearances.— Shri G. M. Joshi, Ld. Advocate for the Applicant,

Shri M. Nair, Ld. Advocate for the Opponents.

Oral Judgement

(Dated 25th February 2002)

The present revision is preferred by the original Complainant feeling aggrieved of order below Exh. U-4, dated 19th September 2001 whereby the 11th Labour Court, Mumbai rejected the application of condonation of delay of 21 months in filing the complaint.

2. The brief facts giving rise to the case may be stated as follows :—

It is seen that Narayan D. Yadav was working as a Bus Driver and he was attached to Dharavi Depot. The said delinquent driver was issued a charge-sheet on 28th December 1998 under standing order 20(j), (i), (r), (zf). A departmental enquiry was conducted against him in which he participated. The Enquiry Officer ordered for his dismissal from the service *w. e. f.* 11th June 1999. Feeling aggrieved of the said dismissal, he preferred two departmental

appeals and the second appeal came to be rejected on 13th August 1999. Thereafter the Complainant rushed to the Labour Court and filed Complaint (ULP) No. 188/2001 on 30th March 2001 alleging unfair labour practice adopted by the Respondent BEST undertaking.

3. It indicates that the Complainant filed application Exh. U-4 *i. e.* for condonation of delay in filing the complaint of about 21 months stating that his elder daughter was a patient of T. B. In her treatment, his wife hired T. B. due to close contact with her elder daughter and for medical treatment of both the patients, he borrowed money by way of loan from others and from P. F. and he was compelled to surender the rental premises at Kurla to lits Landord and thereafter he proceeded to his native place from 11th June 1999 and is staying there till date.

4. The Complainant also stated that his second daughter who was 2 years old is mentally retarded and the Complainant was to take care of her and hence he could not prefer the complaint, referred to above. The Complainant says that the delay in filing the complaint is not deliberate, but because of the unavoidable circumstances and therefore the delay be condoned in the interest of justice.

5. The BEST undertaking *i. e.* Respondent No. 1 filed affidavit-in-reply Exh.C-2 and resisted the Application of the Complainant. It is contended that the contentions in the Application are vague and without sufficient ground. It is submitted that the reasons given for condonation of delay are not *bonafide* and not supported by any documentary evidence. It is stated that for the proved misconduct under the standing orders, referred to above, the Complainant has been rightly dismissed. It is denied that he was not paid on and from 28th December 1998 till the date of his dismissal from the service. It is stated that the Respondents are not aware about the ailment of Complainant's daughter and wife, as mentioned in the Application for condonation of delay and the medical treatment required for them. Thus on these and other grounds, it is the submission of the Respondent that the delay of 21 months is not properly explained and therefore the Application be dismissed.

6. I have gone through the record and proceedings and heard Mr. G. M. Joshi for the Applicant and Mr. M. Nair for the Respondent. The following points arise for my determination with my findings thereon, as below :—

Points—

(1) Whether the Revision Application (ULP) No. 174/2001 for setting aside the order below Exh. U-4 dated 19th September 2001 is to be allowed ?

(2) What order and relief ?

Findings—

Point No. 1 : Yes.

Point No. 2 : Please see order below.

Reasons

7. *Point No. 1* :—It reveals that the Complainant Shri Narayan D. Yadav, Bus Driver who was attached to Dharavi Depot was chargesheeted on 28th December 1998 under S. O. 20(j), (i), (r), (zf). In the departmental enquiry, he came to be dismissed *w. e. f.* 11th June 1999. Two departmental appeals were preferred by him and the second appeal came to be rejected on 13th August 1999. Hence, the Complainant rushed to the Labour Court and filed Complaint (ULP) No. 188/2001 on 30th March 2001. Now the main contention of Mr. Joshi, Ld. Advocate for the Applicant is that there is a delay of 21 months in filing the Complaint because the Complainant's

elder daughter and his wife are T. B. patients and the second daughter is mentally retarded and therefore he was required for their attendance and also the medical treatment to them from the concerned Doctor. In substance, Mr. Joshi canvassed that the Complainant has a good case on merits and if the delay is not condoned, the Complaint of the Complainant will be thrown out at the threshold and he will be deprived of seeking justice.

8. On the contrary, Mr. Nair supported the order passed by the Labour Court rejecting the Application for condonation of delay and pointed out that the Complainant has simply mentioned regarding the illness of the daughter and his wife and not produced the medical certificates showing that they were really sick and taking the medical treatment. As per the submission of Mr. Nair, the Complainant was paid his subsistence allowance and he could have filed the complaint, as laid down u/s. 28 of M.R.T.U. & P.U.L.P. Act *i. e.* within the period of 90 days.

9. On carefully examining the facts and circumstances of the case, in hand, it is significant to note that the Complainant has challenged the order of dismissal dated 11th June 1999 by filing two departmental appeals. The second departmental appeal came to be rejected on 13th August 1999. Therefore, it shows that the Complainant is very much interested in challenging the dismissal order passed by the Enquiry Officer. It is to be noted that the Complainant has in the application specifically stated that his elder daughter and wife are T. B. patients and the second daughter is mentally retarded and he was taking care of them and also providing medical aid through the Doctor. I am aware that the Complainant should have produced the documentary evidence such as medical bills and also the certificate of the concerned Doctor who was treating the patients, referred to above. I am of the view that though the Complainant has not produced the said certificates, as required by the Labour Court, only on that ground the application for condonation of delay of alleged 21 months cannot be rejected. At the time of arguments, Mr. Joshi, Ld. Advocate for the Applicant pointed out that while deciding the second appeal, the authority has considered the ground of the Complainant that his 3 year's daughter was mentally retarded and required medical treatment and expenses of Rs. 100 p. d. Thus it indicates that there is a ailment in the family member of the Complainant and for that purpose he left Mumbai (Kurla) and proceeded to his native place from 11th June 1999 and could not file the complaint within the time limit *i. e.* 90 days, laid down u/s. 28 of the M.R.T.U. & P.U.L.P. Act. It is to be noted that the second appeal of the Complainant has been rejected on 13th August 1999 and if the period of limitation is counted from the said date till the date of filing of Complaint *i. e.* 30th March 2001, it indicates that there is a delay of about 19 months and 17 days. The reasons shown by the Complainant appear to be reasonable, proper and convincing to condone the delay.

10. I am aware that the Labour Court has while deciding the Application, placed reliance on *1999 (B1) FLR-611* (Pune Dist. Central Co-op. Bank Ltd. *V/s.* Hiralal Ramchandra Gaikwad) and on this point Mr. Nair submitted that in the said case, the Medical Officer was examined and necessary documents were produced and therefore the Court has rightly considered the said point and rejected the application in question. There is no dispute regarding the ratio laid down in that case in which there was a delay of 4 years and 7 months, but in the case in hand, there is delay of 19 months and 17 days. One cannot expect that the period of delay is to be explained day-wise or clock-wise. The Apex Court in various rulings taken a lenient view and observed that the Application for condonation of delay is to be considered liberally so that the meritorious case be not thrown out at the threshold, otherwise it will cause injustice to the party knocking the doors. I am convinced with the reasons given by the Complainant, which is on affidavit and he be given a fair opportunity to challenge the departmental enquiry followed

by dismissal order. Hence, in the interest of justice, the Revision Application deserves to be allowed. Therefore, I answer the Point No. 1 in the *Affirmative.*

11. *Point No. 2 :*—In view of the foregoing reasons and finding on Point No.1, I pass the following Order :—

Order

Revision Application (ULP) No. 174 of 2001 is allowed.

The order dated 19th September 2001 below Exh. u-4 in Complaint (ULP) No. 188/2001 passed by the 11th Labour Court, Mumbai is set aside.

Complaint (ULP) No. 188 of 2001 is to be placed on the board of 11th Labour Court, Mumbai on 18th March 2002 at 11 a. m. and the same is expedited.

Parties are directed to appear accordingly and co-operate the Labour Court for expeditions disposal of the complaint without taking unwarranted adjournments.

R & P be sent back immediately.

U. R. PATIL,
President,
Industrial Court, Maharashtra, Mumbai.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai.
Dated the 11th March 2002.

IN THE INDUSTRIAL COURT, MAHARASHTRA AT MUMBAI

BEFORE SHRI V. P. ROTHE, MEMBER

REVISION APPLICATION (ULP) No. 221 of 2001.—(1) M/s. Unique Enterprises, 77, Sarang Street, Khoka Bazar, Crown Building, Mumbai 400 003; (2) Yusuf Bharma, 77, Sarang Street, Khoka Bazar, Crown Building, Mumbai—*Applicants Versus* (1) Jankiprasad Yadav, C/o. Pyarelal Yadav, Parikh Enterprises, 25, Bijijan Street, 1st Floor, Mumbai ; (2) Nagdevi Kamgar Sabha, 92, Nagdevi Street, Mumbai—*Respondents.*

CORAM.— Shri V. P. Rothe, Member.

Appearances.— Shri M. S. Paranjpe, Advocate for Applicants.

Shri Vonod Shetty, Advocate for Respondents.

Order

1. Being aggrieved by the order dated 18th December 2001 passed by the 11th Labour Court, Mumbai in Complaint (ULP) No. 500 of 2001, this revision application has been filed by the Applicant who is the original Respondent in the complaint case. Shortly stated facts of the complaint are as under.

2. The Complaint (ULP) No. 500 of 2001 came to be filed before the 11th Labour Court as the services of the Respondent No. 2 came to be terminated without following due process of law. In the interim relief application, filed alongwith the complaint, on hearing of both the parties, Learned Labour Court pleased to allow the said application and thereby the Respondent has been directed to allow the Complainant to resume his duty within 15 days from the date of order. It is further directed that the Respondent shall pay the wages for the work done by the workman. This order of the Labour Court came to be challenged in this revision on the ground that learned Judge has not taken into consideration the *prima-facie* case. There was no evidence on record that the Respondent workman was employed by the applicant. No appointment letter or payment voucher was produced before the Labour Court. The Learned Judge has lost the sight of the important fact that without looking for the documents regarding the employment of the workman, it has drawn conclusion of employer employee relationship. It failed to take into consideration the documentary evidence on record and also committed an error in reading the letter issued by the union on 11th September 2001. It placed the reliance on the delivery challans produced by the respondent. However, the affidavit in reply filed by the other side is not considered. It granted the whole relief at the interim stage without finding out a *prima-facie* case. Hence, the impugned order dated 18th December, 2001 passed by the 11th Labour Court be set aside.

3. I have heard Learned Counsel for the Applicant Shri M. S. Paranjpe and Learned Counsel for the Respondent Shri Vinod Shetty. I have perused the record and proceeding. Following is the only point arises for my determination :—

(*i*) Whether the order of the Learned Labour Court passed on 18th December 2001 be set aside ?	No.
(*ii*) What order ?	As per order below.

Reasons

4. In the course of the submissions made by the Learned Counsels of both the parties, efforts have been made for amicable conciliation of the matter. Thereafter, both the parties agreed in terms of the pursis at Exh. CU-1. As per this pursis, it was agreed between the

Parties that they shall co-operate for the disposal of the matter on merits by adducing necessary evidence before the 11th Labour Court. During the period of disposal of the matter by the Labour Court, the required arrangement regarding the payment of the amount to the Opponent for the work which he has done has been set out by the parties as per this pursis at Exh. CU-1. Accordingly, the Opponent No. 1 *i.e.* the concerned workman who is working as Coolie is required to report at Gala No. 178, Nagdevi Street to continue to do the work of loading and unloading and delivery work as directed by the owner *i.e* the Applicant. Accordingly, it is further decided that the Opponent No. 1 will report for work from 10-00 a.m. to 7-00 p.m. every day with lunch hour from 1-30 p.m. to 2-30 p.m. as mutually agreed by the parties. Thus, in view of the amicable arrangement chalked out by the parties, it is in the fitness of the interest of justice to expediate the matter by directing the Learned Labour Court to dispose of the matter within the period of 4 months beginning from 1st April 2002 (excluding the month of May, 2002). Accordingly, the Point No. (*i*) is answered in the negative and I pass the following order :—

Order

(*i*) The revision application stands disposed of in terms of pursis Exh. CU-1.

(*ii*) The parties are directed to appear before the Labour Court on 5th April 2002.

(*iii*) The record and proceeding be sent to the Labour Court with the direction to dispose of the main complaint on merits within the period of four months beginning from 1st April 2002 excluding the month of May, 2002.

(*iv*) The parties to appear before 11th Labour Court, Mumbai on 5th April 2002.

No order as to costs.

V. P. ROTHE,
Member,
Industrial Court, Mumbai.

Mumbai,
Dated the 26th March 2002.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai.
dated the 28th May 2002.

IN THE INDUSTRIAL COURT, MAHARASHTRA AT MUMBAI

BEFORE SHRI P. B. SAWANT, MEMBER

COMPLAINT (ULP) No. 178 of 2001.—Bharatiya Kamgar Karmachari Mahasangh, 5, Navalkar Lane, 1st Floor, Prarthana Samaj, Girgaon, Mumbai 400 004—*Complainant Versus* (1) Ritz Hotel, 5, J. Tata Road, Churchgate, Mumbai 400 020; (2) Brig. V. S. Grover, General Manager, Ritz Hotel, 5, J. Tata Road, Churchgate, Mumbai 20—*Respondents.*

CORAM.— Shri P. B. Sawant, Member.

Appearances.— Shri J. R. Pawar, Advocate for Complainant,
Shri N. B. Jalota, Advocate for Respondents.

Order Below Exhibit C-1

(Dictated in open Court)

1. This is an applicantion filed by the Respondents contending *interalia* that the complaint in the present situation is not tenable and, therefore, it is liable to be dismissed. The facts which gave rise to the present litigation can be stated in nutshell as below.

2. The Complainant Bharatiya Kamgar Karmachari Mahasangh has filed the complaint alleging that the Respondent has followed unfair labour practice under items 1(*a*) (*b*) of Schedule II and Items 9 and 10 of Schedule IV of the Act. The complaint is for protecting the services of 26 temporary employees in the hotel. It is pointed out that the question in respect of their employment, unemployment etc. has been comprehensively settled by the Respondents by settlement dated 12th November 2001. The settlement is complete in respect of the rights and liabilities of the parties *interse*. It was agreed to dispose of the present complaint also. Therefore, it is prayed that in view of the settlement, the complaint be disposed of.

3. The application has been opposed by oral submissions on behalf of the Complainant that this complaint cannot be disposed of and that the averments in the settlement do not comprise of settling the dispute so far as the employees in this complaint are concerned. Therefore, it is prayed that the application be disposed of.

4. Having regard to this contention, short question arises for my determination is.—

(*1*) Whether the complaint is maintainable in view of the settlement dated 12th November 2001?	Negative
(*2*) What order ?	As per final order.

Reasons

5. I have referred to the text of the complaint itself. It reflects that 26 employees named in Annexure are continuously working with the hotel for more than 5 years without any break. The workmen mentioned in Annexures 'A' and 'B' were the members of Lal Bavta Hotel or Bakery Mazdoor Union which was a union sponsored by Respondent hotel. In view of the dispute about protecting the interest of the workmen by the said union is concerned, it was pointed out that the union has not made any attempt to refuse the service conditions of the employees. Therefore, they have become the members of the present union. The list of the protected workmen were also forwarded to the Respondent. Inspite of this position, the vindictive attitude of the Respondent has been introduced by the Complainant union and, therefore, the complaint has been filed with a prayer of declaration of following of unfair labour practice and restraining the Respondents from terminating the services of the workmen and/or recruiting new persons in place of these workmen. Besides it is prayed that the Respondent be restrained from selling out removable and immovable property of the Respondent. With this and other grounds, it is prayed that the complaint be allowed.

6. The interim application has been submitted by the union and within time, the Respondents were restrained from pressurising any of the employees on whose behalf the complaint was filed for leaving the membership of the union under the threats of terminating their services etc. The said order is still in force and during the pendency of the complaint or final decision of application Exh. U-2. It appears that the parties have resorted to a settlement.

7. Having regard to the contention raised in the complaint and oral submissions on behalf of the Respondents, I have perused all the correspondence between the union and the Respondent No. 1 together with list of Trainees and the appointment letters issued to the various persons. The fact of employees with the hotel is not in dispute and since the matter appears to have been settled amicably, it is not necessary to raise any controvertial issue to thrash out the settlement already been executed. However, the only question remains to be considered is that to consider the prayer of the Respondent to dispose of the entire complaint as such.

8. It appears that the settlement brought on record is covering the present complaint also. That shows that the settlement was entered into only by discussion that the union shall withdraw the present complaint also. In my opinion, this particular settlement shall consider a proposition that the dispute which was raised pertaining to the 26 employees as such was also being under consideration when the settlement had taken place. If at all this is the position, then obviously the reference will have to be in the context of settlement itself.

9. While perusing the said settlement entered into within the meaning of section 2(*p*) of the Industrial Disputes Act read with section 18(*1*) of the Act, it is transpired that it relates to 130 permanent workmen as well as it relates to the others who are categorised as Badlis, temporaries and were given work in order to temporary exigency of work which was available in the hotel itself. The fact that these temporary employees have enrolled themselves as members of the Complainant union has also been taken care of referring to the principle of present complaint. This fact itself shows that the facts referred to in Complaint (ULP) No. 178 of 2001 have been taken care of so far as to resolve the issue involved in the complaint. It is also pertinent to note that order passed by this Court on 23rd February 2001 has also been reproduced and construed.

10. On these previous instances, the terms of the settlement which have been agreed to between the parties and settled in writing so far as agreement produced before the Court needs to be construed to its true sense. So far as question and service conditions of these temporary employees as referred to in the present complaint is concerned, it appears that the partice have agreed to keep their names on waiting list by retrenching them earlier to that of preparing the waiting list. Their re-appointment in the hotel establishment is agreed to be by order of preference to such employees against the other outsiders. The pay-packet as assured is also having a reference to that of in clause 4 of the terms of settlement. The last para of the settlement clearly envisaged that—

> "Settlement fully satisfies the dispute raised by the union in Complaint (ULP) No. 178/2001 regarding such temporary employees and the said complaint will be withdrawn as settled".

Considering these lines incorporated in the settlement, it is clear that the settlement has been agreed upon by the Complainant. The rights which were claimed by the union so far as these employees are concerned also seem to have been settled by way of agreement under section 2(*p*) of the Industrial Disputes Act. Having regard to this fact, once the terms of settlement are agreed upon by the parties there is no question for challenging the same stating

interalia that those are not the terms being settled for the employees enlisted in this complaint. Having regard to this factual aspect and visualising the true sense of the agreement as entered into in between the parties, I have found it just that in view of the settlement, now the complaint has to be disposed of. Hence, the point is answered accordingly and I pass the following order :—

Order

(*i*) The application is allowed.

(*ii*) The complaint is disposed of being settled.

No order as to costs.

P. B. SAWANT,
Member,
Industrial Court, Mumbai.

Mumbai,
Dated the 13th March 2002.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai.

IN THE INDUSTRIAL COURT AT MUMBAI

REVISTON APPLICATION (ULP) No. 108 of 1994.—IN COMPLAINT (ULP) No. 378 of 1992. (1) M/s. Kokane's Kohinoor Technical Institute, Kohinoor Bhawan, S. B. Marg, Dadar, Mumbai 400 028.—*Applicant No. 1*—(2) Shri Madhav G. Kokane, Proprietor, M/s. Kohinoor Technical Institute, Kohinoor Bhawan-B, S. B. Marg, Dadar, Mumbai 400 028—*Applicant No. 2—Versus*—(1) Bombay Labour Union, 204, Raja Rammohan Roy Road, Mumbai 400 004. (2) M/s. Kohinoor Consultants Pvt. Ltd., M/s. Kokane's Kohinoor Technical Institute, Dadar, Mumbai 400 028. (3) Mrs. Angha Madhav Kokane, M/s. Kokane's Kohinoor Technical Institute, Dadar, Mumbai 400 028. (4) Shri Sandesh Madhav Kokane, M/s. Kokane's Kohinoor Technical Institute, Mumbai 400 028, Andheri (East). (5) Miss Snehal Madhav Kokane, M/s. Kokane's Kohinoor Technical Institute, Gahatkopar, Mumbai 400 086 (6) Mrs. Manisha Kokane-Vaidya, M/s. Kokane's Kohinoor Technical Institute, Kalyan, Dist. Thane. (7) Hon. Presiding Officer, Fifth Labour Court, Mumbai.—*Opponents.*

In the matter of revision application under Sec. 44 of the M. R. T. U. and P. U. L. P. Act, against the order dated 30th April 1994 passed by Vth Labour Court, Mumbai, in Complaint (ULP) No. 378 of 1992.

Present.— Shri V. P. Rothe, Member.

Appearances.— Shri V. P. Vaidya, Advocate for Applicants.

Shri P. S. Shetty, Advocate for Opponents.

Oral Judgement

(Dated 6th March 2002)

1. Being aggrieved by the order dated 30th April 1994 passed by Vth Labour Court, Mumbai, in Complaint (ULP) No. 378 of 1992, the present revision application has been filed by the Applicants and the Respondents Nos. 1 and 2 of the original complaint.

2. The facts of the complaint before the Labour Court may be summarised as under :—

The Complainant Bombay Labour Union filed this complaint against the Respondents Nos. 1 to 7 alleging therein that the Respondent are indulged in unfair labour practices under item 1 of Sch. IV of the M. R. T. U. and P. U. L. P. Act, 1971. The Respondent is the Technical Institute registered under the Bombay Shops and Establishments Act. Earlier to this Complaint, one Complaint being Complaint (ULP) No. 752 of 1992 was filed against the Respondents, which came to be withdrawn as per the consent terms filed by the parties on 24th July 1994.

3. In the present Complaint, it is contended that all the members of the Complainant are employed in various branches of the Respondent Institute. The admissions of the trainees of various branches for different courses sponsored by the Respondent No. 1 Institute. However, the wages are paid to the employees in the name of the Respondent No. 3. The Respondent are engaged in the termination of services of the employees by way of retrenchment on account of reason of slackness in the business for want of participants, students etc. These are the false reasons as after terminating the services of 21 workmen. The Respondents have recruitted 47 persons, in various branches. One Complaint (ULP) No. 1340 of 1992 was filed against the Respondent Nos. 1 and 2 in the Industrial Court, Mumbai. This complaint was for commission of unfair labour practices. The Respondent Nos. 1 and 2 terminated the services of 21 employees as given in Annexure-A. Thus, due to the complaint filed in the Industrial Court, Mumbai, against the Respondent Nos. 1 and 2 for non payment of HRA, the services of the workmen

came to be terminated. This action taken by the Respondents and the present applicants was contrary to Sec. 25-F of the Industrial Disputes Act, 1947. In the complaint before the Labour Court, the jurisdiction of the said Court was challenged alongwith other pleas raised by the Respondents-Applicants. In this complaint, the learned Labour Court held that the Respondent Nos. 1 and 2 are engaged in unfair Labour practices under item 2 (a), (b), (d) and (f) of Sch. IV of the M. R. T. U. and P. U. L. P. Act.

4. It is the above said judgement, which has been challenged in this revision application on the following grounds :—

That the Labour Court erred in not holding that the complaint is tenable and the Court has got jurisdiction. It also erred in appreciating the judgement of the Hon'ble High Court and the Supreme Court in respect of the persons where the person working as teacher would also be the workman. Thus, the Labour Court has committed error apparent on the face of the record and held that the work of teaching in commercial technical institute cannot be viewed as a job of teaching and thus it misconstrued the provisions of the ID Act and the M. R. T. U. and P. U. L. P. Act. The learned Labour Court erred in holding that the Applicant institute did not indulging in the activities of building the character of the students and had committed unfair labour practices. Thus, the said order is based on total non application of mind. In this revision application, it is prayed that the said order be quashed.

5. I heard the learned Counsel of the Applicants Shri V. P. Vaidya Advocate and Shri P. S. Shetty Advocate for the Opponent union. I have gone through the records and proceedings of the Labour Court and the citations placed before him.

6. The following is the point arise for my determination :—

Points	*Findings*
(1) Whether the Order and Judgement dated 30th April 1994 passed by Vth Labour Court, Mumbai, is perverse, illegal and contrary to law ?	No,
(2) What Orders ?	As per the order below.

Reasons

7. The learned Counsel of the Applicants has urged that the learned Labour Court failed to appreciate the fact that the instructors of the vocational classes are not the teachers. It is a matter of common knowledge that for imparting training to the students as T. V. Repairers or scooter mechanics, the instructor is required to give them the demonstrations and to impart them the knowledge of various parts of the machines and various guidelines for undertaking the repairing work. It is submitted by the learned Counsel for the Applicants that after assessing this nature of work undertaken by the instructors, it can be said that those instructors are the teachers and the qualified persons. The learned Counsel for the original Complainants Shri P. S. Shetty has argued that this Court has got the Limited Jurisdiction and authority to interfere with the order of the Labour Court as the revisional powers under Sec. 44 of the M. R. T. U. and P. U. L. P. Act are exercised sparingly and findings recorded by the labour Court need not be interfered with the finding of fact like a court of appeal. If an error even though apparent on the face of record cannot be corrected in a revisional power, as these power are to be exercised on par with the power of the Hon'ble High Court under article 227 of the Constitution. Thus, the jurisdiction of this Court is very limited. It is further submitted by the Learned

Advocate Shri P. S. Shetty that even the wrong decision without anything more, cannot be invoked to attract revisional powers of this court Considering all these submissions, I find that while giving the reasoning of the findings, it is observed by the learned Labour Court in Para 9 of his Judgement that ..... that the Respondent No. 2 itself established that the persons involved in the present complaint are not the teachers is all the strict sense. They are not doing imaginery or power for such activities. These persons are required to do demonstrations and practicles which is essentially mannuall and skill job.

8. The learned Labour Judge has also referred the case of Banglore Water Supply *V/s.* A Rajappa and Others, decided by the Hon'ble Supreme Court and held that the educational institutions are also the industries as per the import of the above said ruling. Similarly, there is a discussion about the definition of the workman and the essential ingredients that the workman should be engaged in skill or unskilled, manual, supervisory, technical or clerical work and held that the instructors of the commercial classes are the workmen. I do not find any reason for disturbing these findings of the learned labour Court, considering the facts proved before it on the strength of the evidence available on the record. In order to exercise the powers under Sec. 44 of the M. R. T. U. and P. U. L. P. Act, it must be shown that there is an error apparent on the face of the record for justifying the interference. In the present case, I do not find such error.

9. It is nextly submitted by the learned Counsel of the applicants Shri V. P. Vaidya that as per the import of the ruling reported in 1988-I-CLR-464 Uma Chopra *V/s* R. N. Jindal, it is held there in that a teacher in school for deaf and dump is a workman as the predominant nature of the petitioner's work involves, mentally or intellectual exersion. The learned Counsel has also referred several rulings and submitted that the nature of the work of the instructor is of moulding character of the students, and hence the instructors are not the workmen. It is very difficult to accept this submission as them facts of the present case fully warranting the findings recorded by the Labour Court on the basis of the evidence adduced before it. There is nothing illegal or perverse in the order passed by the learned Labour Court. Hence, I do not find any reason to interfere with it.

10. It is a matter of common knowledge that there are direct rulings on the point that the instructors of the ITI are the workmen. The vocational classes manned on the large commercial scale by the Respondents and the Respondent is required to employ various persons for running those classes. Undoubtedly, those instructors and other employees of the classes will fall within the character of workmen as defined in the Industrial Disputes Act. To sum up, there is nothing wrong in the order passed by the learned Labour Court, which requires no interference. Hence, I answer the Point No. (1) in the negative and pass the following order :—

Order

Revision Application (ULP) No. 108 of 1994 stands dismissed.

No order as to the costs.

V. P. ROTHE,
Member,
Industrial Court, Mumbai.

Mumbai,
Dated the 6th March 2002.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai.
Dated the 16th March 2002.

कामगार आयुक्त, महाराष्ट्र राज्य, मुंबई

कॉमर्स सेंटर, ताडदेव, मुंबई ४०० ०३४, दिनांक १२ एप्रिल २००२.

क्रमांक औसं/औविअ/प्रसिद्धी/निवाडा/प्र. २६ /२००१/कार्यासन-७.—ज्याअर्थी, औद्योगिक विवाद अधिनियम, १९४७च्या कलम ३९(ब) चे अंतगत प्रदान करण्यात आलेल्या शक्तींचा वापर करून महाराष्ट्र शासनाने आपल्या अधिसूचना क्रमांक औविअ/२०८०/ ५८/काम-२, दिनांक १६ डिसेंबर १९८० द्वारे असा निर्देश दिला आहे की, उक्त अधिनियमाच्या कलम १७(१) खाली शासनास वापरता येम्याजोगे अधिकार कामगार आयुक्त, महाराष्ट्र राज्य, मुंबई यांनाही वापरता येतील.

त्याअर्थी, आता वरील नमूद केल्याप्रमाणे, औद्योगिक विवाद अधिनियम, १९४७च्या कलम १७(१) च्या खालील शक्तींचा वापर करून कामगार आयुक्त, महाराष्ट्र राज्य, मुंबई हे मे. वेलकम ग्रुप सी रॉक शेरेटन, बांद्रा व या आस्थापनेत काम करणारे कामगार यांचे औद्योगिक विवदाबाबत शासन आदेश क्रमांक एडीडब्ल्यु/१०९२/सीआर/१८८२/काम-३, दिनांक १६ मार्च १९९२ च्या संदर्भात औद्योगिक न्यायालय, यांनी दिलेला निवाडा क्रमांक १८/९२/प्रसिद्ध करीत आहेत.

नि. जा. गजभिये,
कामगार आयुक्त,
महाराष्ट्र राज्य, मुंबई.

BEFORE SHRI M. L. HARPALE, INDUSTRIAL TRIDUNAL, AT MUMBAI

REFERENCE (IT) No. 18 of 1992.—ADJUDICATION—*Between*—Messrs Welcome Groups Sea Rock Sheraton, Mumbai.—*And*—The Workmen employed under it.

In the matter of reinstatement of 12 workmen with continuity of service and full back wages from 5th March 1991.

Appearances— Shri J. R. Pawar, Advocate for the Second Party.

Shri N. N. Samant Advocate for First Party Co.

Judgement And Award

1. This is a reference between the first party Company and the second party Workmen/ Union referred by the Govt. of Maharashtra *vide* its letter No. ADW/1092/CR/1882/LAB-3, dated 16th March 1992 for adjudication of industrial dispute, as given in the schedule of the said order.

2. The facts depicts from the Statement of Claim Exh. U-2 filed by the workmen are as under :—

The listed workmen were in the employment of the first party Company from 6 to 11 years and they were permanent workmen. Their wages were in the range from Rs. 1600 to Rs. 1850 per month. Their past service records were also clean and unblemished. They have further contended that initially they were appointed as security watchmen, but their services were utilised by the company as the helpers, workers, canteen boys and lastly as the liftmen. They have further contended that the company is running the hotel at Bandra, Mumbai, which is well equipped with modern amenities and has good reputation. It prepares food for the customers with the help of energy and electricity. Thus, it falls under the definition of 'industry' under Sec. 2 (j) of the Industrial Disputes Act, 1947. They have further contended that the company has capriciously retrenched their services with effect from 5th March 1992 on the pretext of surplus workmen on account of installation of automatic lifts. While doing so, it has not followed the provisions of Sec, 25 N of the ID Act. Even it had not obtained the prior permission of the Government before retrenching them. Thus, the said act on the part of the company is *malafide.* They have further contended that the company could have absorbed them in other activities/ work, but it neglected to do so. It also made fresh recruitment for operating the lifts and for other work after their retrenchmen. It could have given the priority to them by absorbing them on the said post. It also failed to observe their seniority before their retrenchment. Lastly, they have contended that since their retrenchment, they are unemployed and prayed for reinstatement with full back wages and continuity of service with effect from 5th March 1992 and for other reliefs.

3. On appearance, the Company filed its written statement at Exh. C-2 to the statement of claim, through its Personnel Manager Gurumit Singh. According to it, the persons, who appeared in the conciliation meetings, were not the elected representative of the workmen and those representatives had no right to act on behalf of the union of the concerned workmen. Thus, the dispute is not validly raised and the reference is bad in law. Secondly, the statement of claim ought to have been filed by the union, but it has not been filed by the union. It is further contended that the workmen were employed as liftmen and during their employment, they were utilised for other available jobs/post as watchmen, helpers etc.. Their list of seniority was also displayed on the notice board of the company. It is further contended that its hotel is one of the leading 5-Star residential hotel in Mumbai and also reputed one. The said hotel

is a residential hotel and it is registered under the Bombay Shops and Establishments Act, but it is not a factory within the meaning of the definition of the Factories Act. Sec. 25-N of the ID Act is, therefore, not applicable to the hotel and no prior permission of the Government is required for retrenchment of any employees. It is further contended that the services of the workmen were retrenched as per the letter of retrenchment dated 5th March 1991 and these letters were accompanied by the cheques of notice pay and retrenchment compensation by registered post. The workmen, however, refused to accept the said letters. The workmen were not retrenched on any fault or misconduct. But on the reason of surplus workmen. It had acted within its rights in retrenching the surplus liftmen. It was not legally bound by law to absorb the workmen in any other department. Thus, Sec. 25-N of the ID Act has no relevance. It is further contended that the demand of the workmen for compensation at Rs. 50,000 each for mental suffering is not sustainable and they have no right to modify their claim by the statement of claim during the course of trial. So considering all the facts, the claim of the workmen in the present reference be rejected and the Reference be disposed of.

4. On the pleadings of both parties and the material on record, my learned predecessor has framed the following issues and I have given my finding thereon for the reasons stated below :—

Issues	*Findings*
(1) Whether the union has proved that the termination of services of the workmen are in violation of Sec. 25-E, 25-G, 25-H and 25-N of the Industrial Disputes Act ?	
(2) Whether the workmen are entitled to reinstatement with full back wages and continuity of service with effect from 5th March 1991.	
(3) What Order ?	As per the order below.

Reasons

5. Out of the listed workmen, three workmen *viz.* (1) Nicholas Ramon; (2) Anthony D' Casta; and (3) G. T. Lavande have been examined. Beside these 3 workman, one more workman RS. entered the witness box and his evidence in examination in chief came to be recorded Later on, he went abroad and be could not be made available for his cross examination. Therefore, his evidence cannot be considered. On the other hand, the first party company/hotel has examined 2 witnesses *viz.* (1) Shri H. N. Purandare and (2) Ashok Motwani. Both Parties have also relied on the documentary evidence, which can be referred hereinafter at the relevant places.

6. It is not disputed that the hotel of the first party company is one of the reputed and leading 5 Star residential hotel in Mumbai. The listed workmen were in the employment of the first party company/hotel ranging from 6 to 11 years and they were made permanent. They were getting their wages/salary in the range from Rs. 1600 to Rs. 1850 per month each. They were employed as liftmen/security/watchmen and their services were utilised as helpers, workers etc. The first party company/hotel retrenched them service with effect from 5th March 1992 on the ground that they become surplus on account of installation of the self operated lifts. There is no allegation against any of them for having committed any fault or misconduct.

7. From the facts, it appears that the second party union raised dispute over the demand of reinstatement with full back wages before the Conciliation Officer. But, in the present reference, the listed workmen have filed their Statement of Claim with their signatures. Therefore, the first party company/hotel has, by its reply/written statement, raised a contention that the workman had not raised a claim over its management and therefore, the present reference is not maintainable. Though the demand was raised by the union before the conciliation officer, it was on behalf of the concerned listed workman, who have signed and verified the statement of claim. Therefore, it does not appear any substance in the contention that the workmen had not raised any demand over the Management before the conciliation officer.

8. It is the case of the concerned workmen that the activities of the first party company/ hotel fall under the preview of the definitions of 'Industry' under Sec. 2 (j) of the Industrial Disputes Act, 1947. It is further case of the workmen that the first party company is running the residential hotel and various types of food are also prepared by it for the customers with the help of energy and electricity and hence such activities also fall under the definition of 'Establishment' (factory) under the Factories Act.

9. The definitions of 'Industry' under Sec. 2 (j) of the ID Act and of 'factory' under Sec 2 (m) of the Factories Act are as under :—

> " 2 (j) 'industry' means any business, trade, undertaking manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or a vocation of workmen ;
>
> 2 (m) " factory " means any premises including the precincts thereof :—
>
> (*i*) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarilly as carried on. or
>
> (*ii*) whereon twenty or more workmen are working, or were working on any day of the preceding twelve month, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on, but does not include a mine subject to the operation of (the Mines Act, 1952 or a mobile unit belonging to the armed forces of the Union, a railway running shed or a hotel, restaurant or eating place)"

In this regard, the evidence of the workmen deposed on behalf of the listed workmen shows that there were about 800 worker in different shifts in the employment of the first party company/hotel. In the hotel premises, there are residential accommodation and different types of foods. Which are prepared with the help of electricity, energy and generators. The first party company/hotel's witness Shri H. N. Purandare has also admitted in his evidence that the total strength of the employees during the period from the years 1989 to 1991 was approximately 750 permanent employees and about 200 to 250 casual/apprentice/trainee employees. As regards the evidence of preparation of different types of food with the help of electricity, energy or generators is concerned, it is not disputed. The company's witnesses have also not deemed in their evidence that the different types of foods are not prepared with the help of energy, electricity or generators. Thus, it appears from the evidence that there are more then 800 employees in the employment of the company/hotel and it provides accommodation and different types of foods, which are being prepared with the help of energy, electricity or generators. On this point, the learned Advocate for the workmen has relied on the case of *Poona Industrial Hotel Ltd. V/s I. C. Sodhi, reported in 1980 LAB IC 100 (Bom).* He has mainly relied on Para 7 of the said Judgement in the above case. Wherein, the definition of 'factory' under Sec. 2 (12)

of the ESI Act is given and the meaning of manufacturing process under Sec. 2 (k) of the Factories Act. In the said case, the preparation of foods in the canteen of the hotel was done with the aid of power was admitted. Therefore, the question was whether the manufacturing process was implied in the preparation of foods. On the facts, Their Lordships have held that the preparation of food necessarily implies making of food, which is an article or subsidised as mentioned in the definition of phrase 'manufacturing process'. Therefore, the process *viz* use of various electrical appliances involve manufacturing process as defined in Sec. 2 (k) of the Factorise Act. Here, I must mention that the learned Advocate for the first parry company/ hotel has not concentrated his argument on the above point. But, he is concentrated his argument on the point whether the first party company/hotel is an industrial establishment within the definition in Sec. 25-L of the ID Act. From all these facts. It appears that the first party company/hotel is a factory/industry within the meaning of the definitions as given in the ID Act as well as the Factories Act.

10. It is the case of the workmen that they were initially appointed as security workman and their services were utilised by the company/hotel for different purposes like watchmen, helpers, workers, canteen boys, etc. in the company/hotel. Since their work was satisfactory, they were offered to attend the work of liftmen. On this point, the evidence of the workman Nicholos Ramon shows that he was working as liftman-*cum*-security. He was also doing the work of lifting the bags and other work in absence of the regular workmen. He was not appointed directly as liftman, but in general category of workman. The other concerned workman were appointed as watchmen, helpers, canteen boys, etc. In the cross examination, he has denied that his main duties were that of a liftman. The evidence of the second workman Anthony D'Silva also shows that he was employed as a liftman, but he used to do the work of bail boys and also in the security department, during the cross examination, he has admitted that he was promoted as a liftman in the security department with effect from 1st April 1986 in Grgde II. Further, he has voluntarily stated that he used to work as a liftman and he used to help the bail boys whenever required. The third workman Shri G. T. Lavande has also stated that he was working as a liftmen in the hotel from 15 years, but the company/hotel used to give him and other concerned workman the work of bail boys and the security. In the cross examination he has however admitted that he was working as a liftmen on the room services. Thus, it appears from the evidence of all these witnesses that the concerned workmen, including these three witnesses, were doing the work of liftman and in addition to their work, they were required to do other work as bail boy, security, etc. On this point, the company/hotel's Shri H. N. Purandare has admitted that the concerned workmen were designated as general workmen. He has further admitted that the company/hotel has given certificates to the concerned workmen for doing the fire safety worked all the concerned workmen were shown in the security department, From this admissions. It appears that though the concerned workmen were doing the work of liftmen or they were appointed as liftmen, they were shown in the general category, and they were given training of fire safety work/security work, and they were required to do other work other than the work of the liftmen.

11. As regards the seniority, it is the case of the workmen that the duty was cast upon the management of the company/hotel to consider the seniority of the concerned workmen, while terminating their services by way of retrenchment. But there is no specific allegation in the statement of claim that they came to terminated though they were seniors or the Juniors were retained in service. On this point, the workman Nicholas Raymon has only stated that he had no habit of reading the notices affixed on the notice board by the company/hotel, and he could not see the seniority list dated 22nd February 1991. The other workman Anthony D'Casta is

also silent in his examination in chief about the seniority. But in the cross-examination, he has stated that he does not know whether the company/hotel had displayed the notice dated 22nd February 1991 in respect of the seniority list on its notice board. The third witness G. T. Lavande also does not know whether the seniority list was displayed in the company/hotel. Thus, none of the workmen could give correct account of their seniority. On the point of principle of " last come first go," the learned Advocate for the workmen has relied on 2 cases, *viz.* (1) National Iron and Steel Co. Ltd. *V/s* State of West Bengal and Ors. reported in *1967 I LJJ 23 (SC)* and (2) Vinaykumar Kajoo *V/s* State of Rajasthan and Ors. reported in *1968 II LLJ 398 (Raj)*. Since there is no evidence to show that the concerned workman were retrenched prior to their juniors, it is not necessary to discuss the observations in both these cases.

12. The concerned workmen have been retrenched on the reason that they became surplus on account of installation of automatic lifts. The evidence of the company hotel's witness Shri H. N. Purandare shows that there were 9 lifts in the company hotel they were in operation. During the said period, there were 12 liftmen. These liftmen were supposed to operates the lifts. His further evidence shows that the services of the liftmen became redundant, when the lifts in the company/hotel were replaced by the self operating lifts. *i. e.* automatic lifts in the month of October/November, 1990. Thus from the evidence of this witnesses it shows that there were in all 9 lifts and they were replaced by installing the automatic lifts in the month of October/November, 1990. In the cross examination, he has admitted that the work of 12 workmen was available from the dates of their Appointment till their dates of retrenchment. Further, he has admitted that initially all the lifts (old) were automatic from the date of their installation. If it is so, it appears that though the lifts were automatic from beginning, the concerned workmen were being engaged as the liftmen. The old lifts were replaced and the Replacement was completed in the month of October/November, 1990, while the concerned employees came to be retrenched on 5th March 1991. This fact also shows that even after installation of new automatic and self operating lifts were installed, the concerned workmen were retained in service and were used as liftmen from October/Novermber, 1990 to March, 1991. The evidence of this witness further shows that out of 9 lifts, 7 lifts were required to be operated by 7 liftmen and other 2 lift are not required to be operated by the liftmen. From the evidence, again it appears that the liftmen are required in each shift to operate all the lifts. Admittedly, there were 12 liftmen/concerned workmen during the relevant period. If it is so, it does not appear from the evidence of this witness that the concerned workmen were no more required by the company-hotel on account of installation of new automatic lifts. Later on, this witness has stated that only three lifts are in the working conditions. But, he has further stated that other 6 lifts are existing and are not scrapped. The company-hotel has not come with the case that they closed 6 lifts and kept the remaining 3 lifts in the working condition, and this is the reason for retrenching the present concerned workmen from service on the reason of 'surplus workmen'. Any way, it appears form his evidence that there are 9 lifts and out of these 9 lifts, 7 lifts are required to operate by 7 liftmen. Since there were three shifts, it appears that the company-hotel required services of the concerned workmen, who were being engaged as the liftmen.

13. On the same point of installation/replacement of the lifts, the evidence of the company/ hotel's second witness Shri Ashok Motwani shows that in the month of March, 1991, there were 9 lifts in operation and they were automatic. Before that, they were not automatic. As discussed above, the company/hotel's first witness H. N. Purandare says the work of installation/replacement of lifts was completed in the month of October/November, 1990. But this second witness Shri Ashok Motwani says otherwise that before March, 1991 the lifts were not automatic and after March, 1991, they were made automatic. His further evidence shows that the work of making

the lifts automatic was started at the end of 1981 and the same was completed one by one phasewise and it required 4 months for each lift, Even if it presummed that the company/hotel made the lifts automatic one by one and each lift required 4 months, it was for the company/hotel to retrench the concerned workmen by instalment, but the company/hotel did not do so. During the cross examination, this witnesses has changed his earlier version and stated that the lifts were installed some where in the month of September, 1989 and there were 7 lifts in use and the same were used one by one. This witness is saying this fact for the first time before this Court. Even the company/hotel's first witness is not saying the same. Therefore, his subsequent version in his cross examination with regard to 7 lifts cannot be believed.

14. The concerned workmen, who have been examined, have deposed on the point of lifts/installation of lifts. The first workman Nicholas Raymon has stated that the automatic lifts were there in the hotel, when he joined his services. The evidence of the second workman Anthony, Anthony D'Casta shows that after his joining the service, the automatic lifts were installed and they were four in number. The evidence of the third workman G. T. Lawande show that the automatic lifts were in existence before his termination and they were operating the same. His further evidence shows that there were 8 lifts and he was working as a liftmen on one of the lifts for the room service. From the evidence of all these workman, it appears that though the lifts were automatic, they were being engaged as the liftmen. In this connection, it is to be noted that the second workman Anthony D'Casta has denied at one place in his cross examination that in the phase manner from 1982 to January, 1991, all the lifts were converted into automatic and there was no need of the liftman for its operation. Later on, he has admitted that in view of the automization of the lifts, the liftmen were not necessary. Thus, he made two inconsistent statements in his cross examination. Even if his evidence is believed of disbelieved, the fact remains that the lifts were converted before October/November, 1990, and till termination dated 5th March 1991, the concerned workman were working as the liftmen, as stated by the company/hotel's witness Shri H. N. Purandare.

15. The company/hotel has produced 9 envelopes with the letters dated 5th March 1991 accompanied by cheques sent to the concerned 9 workmen by RPAD. All the envelopes have been opened in presence of the learned Advocates of both the parties. On perusal of the same, it appears that the company/hotel had sent the letters of retrenchment compensation alongwith cheque of one month's notice pay and retrenchment compensation to the concerned 9 workmen, on 5th March 1991 by RPAD. The evidence of the company/hotel's witness in respect of sending retrenchment notices dated 5th March 1991 is not challenged. Even it is nowhere suggested that the said letters sent by the RPAD were not sent at the correct addresses of these 9 concerned workmen. Therefore, it is clear that the company/hotel sent these retrenchment letters dated 5th March 1991 alongwith the demand draft of one month's notice pay and retrenchment compensation to the concerned 9 workmen, on their correct addresses by the registered post. As regards the remaining 3 concerned workmen, it is not disputed that these 3 concerned workmen received the delivery of such letters of retrenchment notice accompanied by the demand draft sent by the company hotel.

16. On the point of service of letter by the post on correct address and refuse thereof, the learned Advocate for the company/hotel has relied on 2 cases. (1) Dunlope India Limited *V/s* State of Bengal and Others, reported in *1990-II-LLN-715 (Cal);* and (2) Gujarat Electricity Board *V/s*. A. S. Poshani and Others, reported in *1989-(59)-FLR-474 (SC).* It is held by Their Lordships in both these cases that there is a pressumption of a service of a letter sent under the registered cover, if the same is returnable back with the postal enforcement that the addresses refused to accept the same. No. doubt, the pressumption is rebutable and it is open

to the party concerned to place evidence before the Court to rebut the pressumption by showing that the address mentioned on the cover was incorrect or that the postal authority never tendered the registered letter to him or that there was no occasion for him to refuse the same. The burden to rebut the same lies on the party challenging the fact of service. In the present case, it is not disputed the fact about sending of the letters by registered post to the concerned workmen on the correct address and out of the concerned 12 workmen, 3 concerned workmen have received the letters of their retrenchment and the demand drafts. The envelopes on record in respect of 9 concerned workmen show that they did not claim the letters and hence the said letters came to be sent back to the sender. Since the workmen have not tried to rebut the pressumption by adducing evidence and have not denied their addresses as appeared from the envelopes, the presumption prevails and it is to the pressumed that the concerned workmen were served with the notices sent by the RPAD.

17. On the point of retrenchment, the learned Advocate for the workmen has relied on the case of National Iron and Steel Co. Ltd. (supra) and Vinay Kumat Majoo (supra). In the former case, the services of the workmen were retrenched with effect from 17th November 1958 by the retrenchment notice dated 15th November 1958 and the workman was asked to collect his legal dues and one month's wages in lieu of notice on or after 20th November 1958. On the facts, Their Lordships have held that the retrenchment was illegal as it was in violation of the provisions of Sce. 25-F of the ID Act. It is further held that it was incumbent on the employer in such case to pay the workman wages for the period of notice in lieu of notice, that is to say, if the workman was asked to go forthwith, he had to be paid at the time when he was asked to go and could not be asked to collect his dues afterwards. In the later case, the same principles is laid down by Their Lordships. He has also relied on the case of Mohanlal *V/s* Bharat Electronics Limited and Others, reported in *1981 II LLJ 70 (SC),* wherein, it is held by Their Lordships that where pre requisite condition for valid retrenchment, as laid down in Sch. 25-F of the ID Act, had not been complied with the retrenchment bringing about termination of service was *ab initio* void. As discussed above, in the present case, the company/hotel sent retrenchment notice alongwith the demand draft of retrenchment compensation and one month's notice pay to all the concerned workmen by the registered post. If it is so, then it would be the proper compliance of Sec. 25-F of the ID Act. On this point, the learned Advocate for the company/hotel has relied on the case of G. D. Shinde *V/s.* Associated Cement Companies of India Ltd. and others, reported in *1995 I CLR 157 (Bom).* In that case, the petitioner's service was terminated with effect from 10th November 1983. Before that, he was intimated by notice dated 8th November 1983 sent by registered post. The notice was accompanied by the back draft covering notice pay and retrenchment compensation. The petitioner received the letter and bank draft on 23rd November 1983. On the facts, Their Lordships have held that the termination of service can be said to be with effect from 23rd November 1983 when the petitioner received the letter alongwith the notice pay and retrenchment compensation and as such there is a due compliance of Sec. 25-F of the ID Act. From the observations in the above case, it appears that the service of retrenchment notice accompanied by bank draft covering the notice pay and retrenchment compensation is the due compliance of Sec. 25-F of the ID Act. But it would be effected from the date of service of such notice accompanied by such bank draft. In the present case, only 3 concerned workman received the notice accompanied by the bank draft and the remaining 9 workmen have not claimed the letter containing the retrenchment notice and the bank draft. In case it is found that the retenchment is *bona fide* and the concerned workman are entitled to notice pay and retrenchment compensation under Sec. 25-F of the Industrial Dispute Act, the termination of service from the date of receipt of the retrenchment notice/letter or the date of refusal of letter would be effected.

18. The main controversy between the parties is whether the provisions under Chapter V-B of the Industrial Dispute Act apply to the present case. On this point, the learned Advocate for the company/hotel has submitted that Chapter V-B is not applicable to every establishment. The present company/hotel is not an industrial establishment, but a commercial establishment, therefore, it was not necessary to obtain necessary permission from Government. On the other hand, the learned Advocate for the workmen has submitted that Chapter V-B is applicable to the present case as there was/is about 700 workmen employed in the company/hotel and the business of the said hotel is not seasonal. Sec. 25-K deals with the application of Chapter V-B. As per the said provision, the provision of Chapter V-B shall apply to an industrial establishment (not being an establishment of seasonal character or in which work is performed only intermittently) in which not less than 100 workmen were employed on an average per working day for the preceding twelve months. The definition of 'industrial establishment' is given under Sec. 25-L, which runs as under :—

"industrial establishment" means,—

(*i*) a factory as defined in Clause (m) of Sec. 2 of the Factories Act, 1948;

(*ii*) a mine as defined in Clause (j) of sub-section (1) of Sec. 2 of the Plantations Mines Act, 1952 ; or

(*iii*) a plantation as defined in Clause (f) of Sec. 2 of the Plantation Labour Act, 1951.

Admittedly, there were/are more than 100 workmen employed in the company/hotel during the period of preceding twelve months and the business of the company/hotel was/is neither seasonal, nor intermittently. Further, the company/hotel is a factory within the meaning of Sec. 2(m) of the Factories Act, as discussed in the foregoing para. Therefore, it appears that the Chapter V-B of the Industrial Dispute Act, is applicable to the present case.

19. In the present case, it is not disputed that all the concerned workmen were permanent employees and they were in continuous service for more than one year in the company/hotel. If it is so, the company/hotel was bound to comply with the conditions precedent to retrenchment of its workmen, as required by Sec. 25-N in Chapter V-B of the Industrial Dispute Act.

20. Sub Clause 1(*a*) and 1(*b*) of Sec. 25-N in Chapter V-B of the Industrial Dispute Act gives two pre conditions and they are as under :—

(*a*) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice ; and

(*b*) the prior permission of the appropriate Government or such authority, as may be prescribed by that Government by notification in the *Official Gazette* (hereinafter in this section referred to as the specified authority) has been obtained on an application made in this behalf."

So far as these two conditions are concerned, the evidence of the company/hotel's witness Shri H. N. Purandare shows that he does not know whether his company/hotel obtained any prior permission from the Government to retrench the concerned workmen. Even he does not know whether the company/hotel had given ninety days/three months notice before retrenching the concerned workmen, or while retrenching the concerned 12 workmen. However, he has further admitted that his company/hotel has not given three months' notice before retrenching their services and not offered them three months' wages in lieu of the notice to the concerned

workmen. Thus, this witness has admitted that the conditions in sub-clause 1(*a*) of Sec. 25-N of the Industrial Dispute Act is not complied with. As regards the prior permission of the Government as required under sub-clause 1(*b*) is concerned, he does not know about the same. In this case, the company/hotel has not come with the case that they obtained permission of Government and then the concerned workmen were retrenched from service. The Company hotel has also not produced any documentary evidence on record to show that any such permission from Government was obtained. Therefore, it is clear that the company/hotel has not complied with the conditions precedent to the retrenchment of the concerned workmen.

21. The learned Advocate for the company/hotel has relied on the case of Ritz Private Limited *V/s.* Lal Bavta Hotel Aur Bakery Mazdoor Union and Another reported in *1999 I CLR 455 (Bom.).* In the said case, the Petitioner company closed its South Indian Kitchen and as a result, retrenched cook *viz.* V. T. Kumar. He did not accept the retrenchment compensation, when offered. Then the Respondent union filed a complaint of unfair labour practice, which came to be allowed and hence the petition before the Hon'ble High Court. Their Lordships have held that the definition clause in Chapter V-B of Industrial Dispute Act makes it clear that it would not be applicable to the present case that the Management had offered retrenchment compensation as stated in Sec. 25-F of Industrial Dispute Act and, therefore, the order of the Industrial Court has become unsustainable. In the present case, it appears from the fact that the Chapter V-B of Industrial Dispute Act, is applicable and, therefore, it was incumbent upon the past of the company/hotel to comply with the requisite conditions of retrenchment, but it failed to comply with. Further, the present case is not of a closure of establishment, but of surplus workmen. So considering all the facts, the observations in the above case cannot be made applicable to the present case.

22. During the cross examination of the workmen, it was suggested that there was a strike from 23rd December 1990 and the concerned workmen were on strike on 5th March 1991, that is from the date of the retrenchment. The said strike was called off on 15th April 1991. But, the workman Nicholos Raymon has also admitted that he was on strike and he learnt about termination of his service with effect from 5th March 1991 after withdrawal of the strike and when he came to join his duty. The second workman Anthony D'Casta has also admitted that he was on strike. However, he has stated that he came to know about termination of his service, when he went to report for his duty, on 5th March 1991. The third workman G. T. Lawande has admitted that he was also on strike. He has also admitted that other 11 concerned workmen were also on strike commenced from 23rd December 1990. Thus, it clearly shows that all the concerned workmen were on strike from 23rd December 1990.

23. It is one of the contentions of the concerned workmen that the company/hotel has thereafter recruitted other employees in their place, but no documentary evidence is brought about the same. On this point, the workman Nicholas Raymon has vaugely stated that after their termination, the company/hotel recruitted new hands in their places. But, he could not give any particular thereof. The second workman Anthony D'Casta has however admitted that the company/hotel did not engage any liftman since their termination. The third workman G. T. Lawande has also vaugely submitted that after his termination, the company/hotel appointed new workers in their places. Thus, there is no sufficient evidence to show that the company/hotel recruitted new hands in place of the concerned workmen.

24. From the above discussions, it shows that the Chapter V-B of Industrial Dispute Act, applies to the present case. Therefore, it is not necessary to consider the fact about compliance or non-compliance of Sec. 25-F of the Industrial Dispute Act. Even if it is found that Sec. 25-F applies to the present case, the facts and evidence on record shows that the work of installation and replacement of lifts started in 1988. It required time for about 4 months to each lift and the lifts came to be replaced one by one. The replacement of all the lifts was completed by October/November, 1990. Had it been the case that the liftmen became surplus on account of replacement of automatic/self operating lifts. The company/hotel would have terminated the services of the concerned workmen by installments or at the time of completion of replacement of lifts in the month of October/November, 1990. Thus, it appears that the retrenchment is not *bonafide*. Sec. 25-G gives the general rule that the employer shall ordinarily retrench the workmen, who was the last person to be employed. In the present case, the concerned workmen could not prove that the company/hotel retained the juniors in service and retrenched them. Sec. 25-H says that the employer shall give an opportunity to the retrenched workmen of reemployment. In the present case, there is no evidence that any person/persons is/are employed in place of the concerned workmen. Thus, there is no evidence on record to show that the company/hotel has violated the provisions of Sec. 25-G and 25-H of Industrial Dispute Act. However, it appears that the Chapter V-B is applicable to the company/hotel and it has violated the provisions of Sec. 25-N of the Industrial Dispute Act. Therefore, I have no hesitation to hold that the termination of services of the concerned workmen are in violation of Sec. 25-N of the Industrial Dispute Act. In the result, the Issue No. (1) is hereby decided in affirmative.

25. The learned Advocate for the concerned workmen has submitted that the company/ hotel did not comply with the conditions precedent to the retrenchment, as required in Sec. 25-N of the Industrial Dispute Act. Therefore, the retrenchment is void and the concerned workmen are entitled to reinstatement with full back wages and continuity of service with effect from 5th March 1991. In support of his submission, he has relied on the cases of Mohanlal (*supra*) and Santosh Gupta *V/s.* State Bank of India reported in *1980 II LLJ 72 (SC).* Wherein it is held by their lordships that the pre-condition for a valid retrenchment has not been satisfied, the retrenchment is void *ab-initio.* In such case, the workmen is entitled to a declaration that the workman continues to be in service with all consequential benefits. Since the company/hotel in the present case has not complied with the pre-conditions of retrenchment as given in Sec. 25-N of the Industrial Dispute Act, the concerned workmen are entitled to the relief of reinstatement with full back wages and continuity of service with effect from the date of their retrenchment from service, as per the observations in the aforesaid two cases. In the result, the Issue No. (2) is hereby decided in the affirmative.

26. It has come in the evidence of the workmen that they tried to obtain employment but they could not get any employment and have not gainfully employed elsewhere since their termination of service. The company/hotel has also not brought any documentary evidence on record to show that any of the concerned workmen was gainfully employed. With this, I proceed to pass the following order :—

Order

(1) Reference (IT) No. 18 of 1992 is hereby allowed.

(2) The Company/hotel *viz.* Welcome Group Sea Rock Sheraton Hotel, Mumbai is hereby directed to reinstate the concerned listed workmen in their service and pay them full back wages with continuity of service with effect from 5th March 1991.

(3) The amounts paid by the demand drafts to the concerned three workmen out of the concerned listed workmen, be adjusted from their full back wages.

(4) The company/hotel is also directed to comply with the above order within a period of two months.

(5) Award be passed accordingly.

M. L. HARPALE,
Member,
Industrial Tribunal, Mumbai.

Mumbai,
Dated the 15th February 2002.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai.
Dated the 21st February 2002.

BEFORE SHRI U. R. PATIL, HON'BLE PRESIDENT,
INDUSTRIAL COURT AT MUMBAI

REVISION APPLICATION (ULP) No. 161 OF 2001.— IN— COMPLAINT (ULP) No. 237 of 2001.—M/s. Pharmalab Engineering India Ltd., Star Metal Compound, Near Paper Mill, Lal Bahadur Shastri Marg, Vikhroli (W), Mumbai 400 083—*Applicant—Versus*—Shri R. D. Sawant, 254/10015, Parmanand Co-op. Hsg. Society, Kannamwar Nagar-2, Vikhroli (E), Mumbai 400 083—*Respondent.*

In the matter of Revision U/s. 44 of the M. R. T. U. and P. U. L. P. Act, 1971.

CORAM.— Shri U. R. Patil, President.

Appearances.— Shri B. Menon, Ld. Advocate for the Applicant.

Smt. S. M. D' Souza, Ld. Advocate for the Respondent.

Oral Judgment

(26th March 2002)

The Revision in question is preferred by the Original Respondents feeling aggrieved of the order below Exh. U-2. dtd. 5th May 2001 whereby the 3rd Labour Court, Mumbai allowed the Application of the Complainant thereby directing the Respondent (Applicant herein) not to terminate the service of the Complainant till the final disposal of the Complaint.

2. In brief the facts giving rise to the case may be stated as follows :—

It is seen that the Complainant Shri Sawant was working as a 'Job Inspector' in the Respondent Company. During the course of Employment, he was issued a charge sheet dtd. 25th November 2000 contending therein about the misconduct and indecent behavior, etc. The Complainant gave reply dtd. 29th November 2000 to the charge-sheet and the enquiry was concluded and it was kept for finding and report of the Enquiry Officer and the last date was given by the Enquiry Officer as 23rd April 2001, In the meantime the Complainant rushed to the Labour Court and filed a Complaint of unfair labour practice U/s. 28 read with item 1 (*a*), (*b*), (*d*), (*f*) and (*g*) of Sch. IV of the M. R. T. U. and P. U. L. P. Act, 1971 and in the said Complaint, the Complainant has taken out Application Exh. U-2, *i. e.* for interim relief.

3. The Complainant states that the Company did not like the workers joining the Union and also the Union taking up his matter. The Complainant states that he is a committee member of the Union. The Complainant states that he joined the services of the Respondent in the month of October, 1991 and he was posted at Vikhroli and thereafter transferred to Ghatkopar. According to Complainant, he was responsible to persuade the workmen not to sign seperate settlement which was only restricted to Ghatkopar unit. Therefore the Respondent held grudge against him and started creating adverse record. It is contended that on 22nd September 2000 some material was received from a supplier and the Complainant was required to inspect the goods and forward the inspection report to his Senior Production Incharge. It is stated that it was the responsibility of the Complainant to ensure that the raw material or components purchased by the Company meet the requisite standard so that the customers of the Company will have no objection. The Complainant did not wish to compromise on the quality in the interest of the company. The Company however wanted the Complainant to certify the product of the raw material component purchased by the company by ignoring whatever pit falls or short coming that were observed in the mart material components.

4. The Complainant further states that on 25th November 2000 a charge-sheet was issued against him. It is alleged that in the month of December, 1999 the Complainant has committed serious misconduct, but the Complainant gave undertaking, so no action was taken. It is further alleged that being a unit committee member, the Complainant was indulging and interfering in many unlawful activities and committing indisciplinary actions. The Complainant states that no specific details were given. Enquiry was held by Shri R. R. Yadav, Enquiry Officer, who has been paid fees from the Respondent Company. It is submitted that the Respondent (Applicant herein) is indulging to dismiss the Complainant from service and therefore the Complainant prayed that he may not be dismissed.

5. The Respondent Company filed reply Exh. C-2 and the same may be summarised as under :—

The enquiry conducted by the Respondent Company is finished and enquiry Officer is required to give his findings. While the enquiry continues, the wokman is an employee, hence holding the enquiry is a managerial function. Respondent denied that the Complainant is victimised for trade union activities. It is also denied that false allegations are made against him. Respondent prayed for rejection of the Application.

6. The Labour Court on going through the record and proceedings passed the impugned order, referred to above.

7. I have called for the record and proceeding and gone through the same. Heard Mr. Menon, Ld. Advocate for the Applicant and Smt. D' Souza, Ld. Advocate for the Respondent. The following points arise for my determination, with my findings thereon, as below :—

Points :

(1) Whether Revn. Application (ULP) No. 161/2001 is to be allowed by setting aside the impugned order dtd. 5th May, 2001 ?

(2) What order and relief ?

Findings :

Point No. 1— No.

Point No. 2— Please see final order.

Reasons

8. Point No. 1:— It is seen that Mr. R. D. Sawant joined the services of the Applicant herein as a Job Inspector in October, 1991 and initially he was posted at Vikhroli and thereafter transferred to Ghatkopar. Record reveals that while the Complainant was in service, he was issued a charge-sheet dtd. 25th November 2000 in respect of the alleged misconduct committed by him. In the departmental enquiry, the Complainant participated and as per the submission of the Ld. Advocate Shri Menon, the enquiry has been completed and the findings and report of the Enquiry Officer is awaited. The Complainant has filed Complainant (ULP) No. 237/2001 on 20th April 2001 for the necessary reliefs mentioned therein and alongwith the Complaint, he has also filed Application for Interim Relief below Exh. U-2 requesting therein that the Complainant be not dismissed from the services, etc.

9. Now the main contention and grievance of Mr. Menon, Ld. Advocate for the Complainant is that the Labour Court has committed error and illegality in granting the interim relief to the Complainant, as detailed above, when the Complainant has already participated in the departmental enquiry and only the findings and report of the Enquiry Officer was to be submitted. As per the contention of Mr. Menon, the Complainant has disobeyed the directions of the superiors *i. e.* the Sr. Production Incharge and for that purpose the conduct of the Complainant is mentioned in the charge-sheet, at Annex. 'A' to the Complaint. Mr. Menon further pointed out that in the departmental enquiry, the evidence of the material witnesses and particularly of Mr. Dwivedi has been recorded and as per the evidence on record, Mr. Dwivedi has deposed that Mr. Sawant *i. e.* the Complainant has disobeyed the order of the Sr. Production Incharge and under the said circumstances, the Labour Court committed illegality in granting the final relief while deciding the Application U-2 and in support of his submissions, he invited my attention to a case reported in *1960 II LLJ Page 712* [Delhi Cloth and General Mills *V/s.* Additional Industrial Tribunal (Shri Rameshwar Dayal) and anr.] On going through this case, it indicates that there was a problem for consideration in respect of the Interim relief U/s. 33 and 33-A. While delivering the judgment, the Hon'ble Apex Court observed that "Interim Relief should not be the whole relief that the workman would get if they succeeded finally. Hence pending an Application under section 33-A of the Act, the employer could not be directed to give work to the petitioner or to pay him his wages by way of interim relief." Mr. Menon also

placed his reliance on *1995 Lab I. C. Page 2714* (Hindustan Lever Ltd. *V/s.* Ashok Vishnu Kate and ors). While deciding this case, the Hon'ble Supreme Court held that "Only when a very strong *prima facie* case is made out by the Complainant appropriate interim orders intercepting such domestic enquiries in exercise of powers U/s. 30 (2) can be passed by the Labour Courts. Such orders should not be passed for mere askance by the Labour Courts. Otherwise, the very purpose of holding domestic enquiries as per the standing orders would get frustrated."' Thus relying on the cases, referred to above and pointing out the enquiry proceedings, Mr. Menon pressed for setting aside the impugned order passed by the Labour Court.

10. On the contrary, Smt. D' Souza, Ld. Advocate for the Respondent supported the judgment of the Labour Court and canvassed that apprehending the dismissal order, the Complainant has rushed to the Labour Court and filed the Complaint on 20th April 2001. She pointed out from the proceedings that Mr. Sawant, the Complainant has acted *bonafide* while rejecting the goods (materials) which were received from the supplier on 22nd September 2000. She further argued that the Complainant being Job-Inspector, it was his duty to inspect and verify the goods and accordingly when he was not satisfied, he rejected the goods, but his Sr. Production Incharge told him orally to accept the goods and therefore there is a controversy between the parties regarding the disobedience of the order of the superior. The Respondent's Advocate also argued that the Labour Court has considered the circumstances under which the Complainant has not obeyed the order and therefore that cannot be said to be a deliberate or intentinal misconduct on the part of the Complainant. The Complainant's Advocate pointed out that while considering the order of the Labour Court under revisional jurisdiction, as laid down U/s. 44 of the M. R. T. U. and P. U. L. P. Act, the Industrial Court is to be cautious and in support of her submission, she placed her reliance on a case reported in *1996 (3) LIN 476* (Vithal Gatlu Marathe *V/s.* Maharashtra State Road Transport Corporation and ors.), and *1994 I LLN 112* (Pest Controlt Pvt. Ltd. *V/s*. Pest Control (India) (Private) Ltd. Employees' All India Union and ors.). The sum and substance of the aforesaid rulings lay down the jurisdiction of the Industrial Court U/s. 44 as revisional authority, whereby is cannot act like an appellate authority and cannot take upon itself the task of reappreciating the entire evidence to find out whether the entire evidence to find out whether the decision of Labour Court was correct or not. Even if on reappreciating the evidence such authority comes to a conclusion different from the one arrived at by Labour Court it cannot disturb the finding of Court below in exercise of its limited supervisory jurisdiction. Thus as per the submission of Respondent's Advocate, the impugned judgment and order is consistent to the record and therefore the same be maintained.

11. On hearing the controversy between the Ld. Advocates for the parties, it is rather difficult for me to share the submission of Mr. Menon, Ld. Advocate for the Applicant. In the present case, the record and proceedings indicate that the Complainant was issued with a charge-sheet on 25th November 2000 in which there is a charge against the Complainant that he being unit committee member, have been indulging and interfering in many unlawful activities and committing indisciplinary actions. There is also a charge that it has been observed by the Company that sometimes the Complainant gives instructions to his co-workmen contrary to the instructions given to them by the superiors. From the submissions of the Ld. Advocates for the parties and also from the record, it indicates that in the enquiry proceedings there is no such a contention or misconduct was agitated before the Enquiry Officer.

12. From the record and proceeding, it shows that the charge against the Complainant is only that as an Inspector he was required to inspect the materials coming from outside and prepare his inspection report and forward the said report to the Sr. Production Incharge, who is the final authority to take the decision in respect of acceptance and rejection of the materials. Accordingly on 22nd November 2000 some material was received from a supplier and the Complainant was required to inspect the goods and forward the inspection report to his Superior Production Incharge. It is alleged in the charge-sheet that instead of performing his required duties, he interfered with the duties of Sr. Production Incharge who has used his discretion and allowed the material to be used and to effect the delivery of the machines by 29th October 2000.

However, because of his wilful interference in the job of Senior Production Incharge, he did not allow the material to be sent for buffing and prevented the material to be moved from Inspection. Department which resulted in late delivery of the machines and thereby caused financial loss to the Company, etc.

13. On the aforesaid charge, evidence of both the parties has been recorded by the enquiry Officer and as argued by the Applicant's Advocate Mr. Menon, the report and findings of the Enquiry Officer were awaited, but the Complainant in the meantime rushed to the Labour Court and filed the Complaint, referred to above.

14. It is seen from the record and Proceedings that the Complainant being a Job Inspector, it was his duty to inspect the materials received from outside and that is also mentioned in the charge-sheet and there is an evidence to that effect of Mr. Dwivedi who is the Sr. Production Incharge. The main controversy is that as per the assersion of the Complainant, goods which were received on 22nd September 2000 were not upto the mark and therefore he rejected the said goods. However, it is the contention of the Sr. Production Incharge Mr. Dwivedi that he had ordered the Complainant to receive and inspect the goods and to effect the delivery by 29th October 2000 and the evidence of Mr. Dwivedi indicates that the said goods were to be later on sent for buffing. The Complainant Mr. Sawant declined to accept the goods and asked his superior *i.e.* Sr. Production Incharge to give instructions, referred to above, in writing and therefore the Complainant has been charged for disobedience of the order of the superior.

15. The Labour Court has in its impugned judgment in para No. 8 observed that though in the present case the Complainant had disobeyed the order of his superior, he acted in good faith that the quality of the goods supplied to Company must be good. On this point Mr. Menon, Ld. Advocate for the Applicant stressed that when the Labour Court has observed that there is a disobedience on the part of the Complainant, the Labour Court should not have granted the relief.

16. It is significant to note that the Complainant from the beginning was reluctant to accept the goods because the same were not as per the specifications and therefore the said goods were not accepted, but the superior, as stated above, ordered the Complainant to accept the goods. In the regard the Labour Court has observed that the Complainant has acted *bonafide* and in the interest of the Company though he had disobeyed the order of his superior the same was a *bonafide* act. The said observation of the Labour Court *prima facie* indicates that the Complainant being a Job Inspector has performed his job in respect of examination of the goods in question which were forwarded to the Company on 22nd September 2000 and on inspection of the same, the said goods have been rejected by the Complainant *i. e.* Respondent herein and it appears that he has performed his duties an a Job-Inspector. I am aware that the Superior *i. e.* Sr. Production Incharge had ordered the Complainant to receive and accept the goods, but the Complainant insisted for giving such order in writing and there is nothing on record that such order was issued in writing to the Complainant. I am aware that on this point Mr. Menon canvassed that the Applicant herein being a Private Limited Company, no such orders in writing are issued, but oral instructions are sufficient. The said submission of Mr. Menon if followed by the Company, that will be considered at the time of hearing the Main Complaint. *Prima facie* it indicates that the Complainant Mr. Sawant has been a Job Inspector performing and discharging his job bonafidely and at this juncture on *malafide* or deliberate disobedience of the order of the Superior can be ascribed to the Complainant. The observations of the Labour Court appears to be reasonable and proper.

17. While considering the Interim Relief Application U/s. 30 (2), the Court has to see *prima facie* strong case, balance of convenience and irreparable loss. In the case in hand, as referred to above, the charge against the Complainant is disobedience of the order of the superior, as detailed above and whether the said disobedience is wilful or intentional, that can be seen at the time of hearing the Main Complaint. But, *prima facie* it indicates that the Complainant has acted as per the job entrusted to him *i. e.* of a Job Inspector. Complainant under the said

circumstances if kept out of employment, it will cause loss to him and also balance of convenience tilts in his favour. I don't find that the Labour Court has committed any error or illegality or made observation beyond the record available, while passing the impugned order.

18. I am aware that while granting the interim relief, the Court cannot generaly grant the final relief, otherwise the purpose of holding the departmental enquiry as per the Standing Orders will be frustrated. In the case in hand, as detailed above, the rival contentions of both the parties regarding the charge of disobedience will be considered while disposing the Main Complaint, based on the oral or documentary evidence of both the parties, and any opinion expressed in the instant Revision may prejudice the rights of both the parties. From the circumstance on record, I am convinced that the Complainant has made out a strong *prima facie* case and exception to the judgment referred by the Labour Court, reported in *1995 Lab. I. C. Page 2714* and relied above. Thus on carefully scrutinising the facts and circumstances, I don't find that the Applicant has made out a case for interference by the Industrial Court, as laid down U/s. 44 of the M. R. T. U. and P. U. L. P. Act. Hence, I answer Point No. 1 in the *Negative*.

19. Considering the facts and the points involved in the case in hand, I am of the opinion that if the Complaint is disposed of expeditiously, that will meet the ends of justice.

20. *Point No. 2 :*—In view of the foregoing reasons and finding on Point No. 1, the Revision seems to be devoid of any merits. Therefore, I pass the following Order :-

Order

Revision Application (ULP) No. 161 of 2001 is dismissed.

Complaint (ULP) No. 237 of 2001 is expedited and the Labour Court is directed to dispose of the same by the end of June, 2002.

No order as to cost.

U. R. PATIL,
President,
Industrial Court, Maharashtra, Mumbai.

Mumbai :
Dated the 26th March 2002.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai.
Dated the 8th April 2002.

IN THE INDUSTRIAL COURT, MAHARASHTRA AT MUMBAI

BEFORE SHRI U. R. PATIL, PRESIDENT

REVISION APPLICATION (ULP) No. 48 OF 2002 In COMPLAINT (ULP) No. 511 of 2001.— M/s. Century Textiles and Ind. Ltd., P. B. Marg, Mumbai 400 025. –*Applicant*— *Versus*—Rajmani Mukku Yadav, Teen Dongri, Prem Nagar, Unnatnagar Road, Zopadpatti Sudhar Sangh, Goregaon, Mumbai 400 062.–*Opponent.*

In the matter of Revision u/s. 44 of the M. R .T. U. and P. U. L. P. Act 1971.

CORAM.— Shri U. R. Patil, President.

Appearances.— Shri S. P. Singh, Ld. Advocate for the Applicant,

Shri I. A. Engineer, Ld. Advocate for the Opponent.

Oral Judgment

(20th March 2002)

The present Revision Application is preferred by the Original Respondent *i.e.* M/s. Century Textiles and Industries Ltd. feeling aggrieved of the judgment and order dated 20th February 2002 below Exh. U-3 whereby the 4th Labour Court, Mumbai directed the Applicant herein to allow the Complainant to work and pay him wages till the decision of the Main Complaint. The said order was to take effect after one month from the date of passing of the order.

2. Brief facts giving rise to the case may be stated as under :—

Record reveals that the Complainant Shri Rajmani Mukku Yadav joined the services of the Applicant Mill as a Worker from 1974. The said worker proceeded on authorised leave from 15th October 2000 to 23rd November 2000 *i.e.* for 5 weeks. Thereafter the said Complainant was to resume on duty *w.e.f.* 24th November 2000 but he remained absent for a long period and therefore a charge-sheet dated 10th January 2001 came to be issued under the Standing Orders applicable to the Operatives and the same was sent by R.P.A.D. on 12th January 2001. Despite the receipt of the charge-sheet the Complainant remained absent and therefore the enquiry was proceeded *exparte* and the Complainant came to be dismissed from the services *w.e.f.* 17th September 2001.

3. Now the main contention and grievance of the Complainant is that the Original Respondent employer committed unfair labour practices under item 1(a), (b), (d), (f) and (g) of Sch. IV of the M .R. T. U. and P. U. L. P Act. It is contended that he was in the Respondent Mill since 12th November 1974 as a permanent worker and he maintained clean record. According to him, he is a member of Girni Kamgar Sangharsh Samiti, a trade union, which was disliked by the Respondent Mill and therefore they used to harass him being a member of the said Union. It is also stated that he was suffering from T. B. due to the hazardous nature of his employment. It is stated that he proceeded on medical leave *w.e.f.* 6th March 1999 upto 21st September 2000. Though leave was sanctioned to him, his contribution was not paid to the E.S.I. Corporation and therefore he became disentitled to medical benefits.

4. The Complainant further states that again he joined on 22nd September 2000 and worked up to 14th October 2000 and proceeded on sanctioned leave from 15th October 2000 to 23th November 2000. However, due to non-recovery from his illness, he could not report for his duties till 18th September 2001. It is further submitted that on the said day when he reported for duty, he was not allowed to resume it. It is contended that no showcause notice or charge-sheet was issued to him. He was also not given any opportunity during the enquiry and all of a sudden on 22nd August 2001 he received enquiry report. It is submitted that he was not aware of any enquiry

conducted against him and the same is in violation of principles of natural justice. The Complainant states that under the given circumstances mentioned in detail in the Complaint, the enquiry is not fair and proper and therefore the balance of convenience is in his favour and prayed for Interim Relief that pending the hearing and final disposal of the Complaint, charge-sheet be set aside and Respondent be restrained from terminating his services and to direct the Respondents to reinstate him with full back wages, etc.

5. The Respondents by filing affidavit-in-reply Exh. C-3 resisted the Application and the same may be narrated as follows :—

The Respondent *i.e.* Applicant herein admitted that the Complainant was on leave, as detailed above, but he was to resume his duties on 24th November 2000. But he neither reported for work nor sent any Application for extension of leave and continued to remain absent unauthorisedly. It is submitted that because of the absenteesim, a charge-sheet dtd. 10th January 2001 was sent by R. P. A. D. which was received by the Complainant. It is also stated that during the said period, the Company received medical certificates from the Complainant showing different diagnosis. Realising the certificates sent by the Complainant, the gave direction to the Complainant to appear before the medical Officer of the Company, but he failed to appear. Again the Company sent letter dated 2nd June 2001 to the Complainant to attend the enquiry proceedings on 20th June 2001. Despite the receipt of the charge-sheet, the Complainant failed to attend the enquiry and therefore the enquiry conducted *exparte*. It is asserted that findings of the Enquiry Officer were also sent to the Complainant and the same were received by him. The dismissal order dated 19th July 2001 was also sent to the Complainant. It is contended that the enquiry was conducted by following principles of natural justice in a fair way and no unfair labour practice was been committed. This on these and other grounds, the Respondents requested to dismiss the Application Exh. U-3.

6. The Labour Court decided the Application Exh. U-3 and allowed the same by its impugned judgment and order dated 20th February 2002.

7. I have called for the record and proceeding and gone through the same. Heard Mr. S. P. Singh, Ld. Advocate for the applicant and Mr. I. A. Engineer, Ld. Advocate for the Respondent. The following points arise for my determination with my findings thereon, as below :—

Points :—

(1) Whether Revision Application (ULP) No. 48/2002 is to be allowed by setting aside the impugned judgment and order dated 20th February, 2002 ?

(2) What order and relief ?

Findings :—

Point No. 1 : Yes.

Point No. 2 : Please see order below.

Reasons

8. *Point No. 1.— Record* and Proceedings reveal that Mr. Rajmani Mukku Yadav was working in the capacity of workman right from 1974. The said employee proceeded on authorised leave *e. f.* 15th October 2000 to 23rd November 2000 *i.e.* for 5 weeks and he was to resume his duties on 24th November 2000, but he failed to remain present for a considerable period. The Company issued a charge-sheet dated 10th January 2001 and the same was sent to the employee by R. P. A. D. on 12th January 2001. Now the main contention of Mr. S. P. Singh, Ld. Advocate for the Applicant

is that despite receipt of the charge-sheet, the delinquent employee remained absent and falsely denied the receipt of the charge-sheet. In support of his submission Mr. Singh invited my attention to the R. P. A. D. acknowledgement dated 12th Jaunary 2001, which shows the dispatch date and there is a signature of the Receiver of the registered packet and it shows the name of Complainant Rajmani Yadav. Therefore, it clearly shows that the R. P. A . D. packet was received by the Complainant, but he had not put the date below his signature. On this point, much was canvassed by Mr. Engineer that the Complainant never received the charge-sheet and the signature on the acknowledgement receipt is not of the Complainant. At this stage, the submission of Mr. Engineer, Ld. Advocate for Respondent Cannot be accepted because the Complainant himself has put his signature on the R. P. A. D. packet which was sent to his native place in Uttar Pradesh. Realising this position, I don't find any weight in the submission of Mr. Engineer that the charge-sheet was not received by the Complainant.

9. It is important to note that there is no dispute that the Complainant from 24th November 2000 onwards remained absent and sent the medical certificates from his native place showing that he was suffering from T. B. and was taking the medical treatment from the Doctor at his native place. On this point, Mr. Singh for the Applicant invited my attention to the various medical certificates sent by the Complainant and on seeing the said certificates, it shows that in the certificate issued on 8th December 2000, the concerned Doctor has certified that the Complainant was fit to resume normal duties from 8th December 2000. The Complainant has forwarded another medical certificate from a different Doctor in which it is mentioned that the Complainant was advised rest from 8th December 2000 and he was made fit to resume his normal duties from 9th January 2001. Thereafter the Complainant has produced another medical certificate and it shows that the Complainant was suffering from Jaundice and he was given medical from 8th January 2001 and to which date, the same is not mentioned. Thus the Complainant time and again produced the medical certificates. On going through the medical certificates produced by the Complainant, it shows that there is no whisper in the said certificates that the Complainant was unable to move and that he was advised total bed-rest. Therefore, it was for the Complainant to come down to Mumbai when the charge-sheet was received by him, as referred to above, but he failed to attend the departmental enquiry, which was to commence within a week from receipt of the charge-sheet.

10. The Enquiry Officer proceeded *exparte* is the departmental enquiry as the Complainant failed to participate and issued dismissal order on 17th September 2001 and the same was also sent by the employer by R. P. A.D. as claimed. However, neither the acknowledgement was received nor the sealed envelope came back. On this point, Mr. Singh argued that from time to time the employer sent letters to the Complainant , but he failed to come to the Office of the employer and remained absent throughout. In substance, Mr. Singh canvassed that the order of dismissal which has been passed by the employer is right and proper and the same is by following due process of law. It is canvassed that the Labour Court has not properly appreciated the facts and circumstances and only gave importance to the alleged illness of the Complainant and the certificates produced by him from time to time. In view of this position, Mr. Singh argued that the impugned order passed by the Labour Court is not proper and particularly while deciding the Interim Application, the Labour Court should not have granted the final relief *i. e.* of reinstatement and payment of wages till the decision of the Main Complaint. In support of his submission he invited my attention to the case reported in *1997 II LLJ Page 1130* (Chief Executive Officer, Zilla Parishad, Beed *V/s.* Ulhas Damodhar Thigler) and *1999 I CLR Page 1257* (Ichalkaranji Municipal Council *V/s.* Raju Bandu Taral and Ors.). On going through the aforesaid cases, it shows that there was a point for consideration as to whether while deciding the Interim Application, the Labour Court or Industrial

Court committed an error in granting the interim order in the form of a final relief in the Complaint without determining the main issue involved in the Complaint. It was incumbent on the Court *i.e.* Industrial Court to see if there was a strong *prima facie* case in favour of the Complainant employee, before granting the interim relief. Thus the view taken by the Hon'ble Bombay High Court makes it clear that while deciding the Interim Relief Application, the final relief should not be granted and it depends upon the strong *prima facie* case made out by the concerned Complainant.

11. Mr. Singh, Ld. Advocate for the Applicant on the point of medical certificates issued by the Complainant argued that simply the production of the medical certificates is not sufficient unless the same are proved by examining the concerned Doctor. In support of his argument, he also relied on a judgement reported in *1960 I LLJ Page 548* (Petlad Turkey Red Dye Works Company Ltd. *V/s.* Dayes and Chemical Workers' Union and ors.) and Judgment reported in *Supreme Court Labour Judgments Vol. I Page No. 6* (Buckingham and Carnatic Co. Ltd. *V/s.* Venkatih and anr.). On going though the aforesaid rulings, it shows that the burden is on the party who asserts a statement to be correct to prove the same by a relevant and acceptable evidence. Similarly it has been held in the Supreme Court ruling that if the employee was examined by the Medical Officer of the employer and the Medical Officer was unable to confirm the medical certificate granted by the Civil Assistant Surgeon, it was not open to the High Court to consider the propriety of the conclusion reached by the Labour Court on this point. The sum and substance of the aforesaid rulings indicate that simply production of the medical certificates is not sufficient, but the same are to be proved by adducing oral evidence by the concerned Medical Officer. Thus Mr. Singh canvassed that the Ld. Labour Court has unnecessarily given weight to the alleged illness of the Complainant and the series of medical certificates produced by the Complainant and lastly requested to set aside the impugned order.

12. On carefully going through the impugned Judgment of the 4th Labour Court, it appears that the said Labour Court has given much more importance to the sickness of the Complainant and the medical certificates produced by him, as mentioned in para No. 7. It is also observed by the Labour Court that when the Complainant himself was sick, during the enquiry, it cannot be expected that he should attend the enquiry. The said observation of the Labour Court is only one-sided because as detailed earlier, in the medical certificates produced by the Complainant, there is no specific mention that the Complainant was bed-ridden and could not move from his native place. On the contrary, in the medical certificates, as detailed above, the concerned Doctors have made the Complainant fit to resume duties from particular dates and the Complainant appears to have changed another Doctor and got another medical certificate showing his inability to resume on duty because of the illness. If the aforesaid medical certificates produced by the Complainant and the ground of illness is considered, I am of the view that the Complainant should have atleast once visited the Company *i. e.* employer and preferred the Application alongwith the medical certificate or should have shown his readiness to be examined by the Company's Doctor, but he failed to do so. In the light of the conduct of the Complainant has unnecessarily given weight to the illness of the Complainant and the so-called medical certificates produced by him.

13. It is important to note that the charge-sheet dated the 10th January 2001 was sent by the employer by RPAD on 12th January 2001, receipt whereof is denied by the Complainant. As detailed earlier, the acknowledgement receipt bears the signature of the Complainant and therefore it was his duty to attend the enquiry proceedings. I am of the opinion that when the Main Complaint is pending before the Labour Court, all the acts and circumstances can be considered on the basis of the oral evidence that may be adduced by both the parties and if any opinion is expressed regarding the departmental enquiry and the findings of the Enquiry Officer and the order of dismissal, it will cause prejudice to either side.

14. It is necessary to place on record that the Labour Court while granting the relief in the impugned order, directed the employer to allow the Complainant to work and pay him wages till the Complaint is finally decided. On this point, the Labour Court has observed that the Complainant was sick from T. B. which needs long treatment as well as heavy diet and when the Complainant is out of employment, he cannot afford the same and therefore the balance of convenience lies in his favour. The said observation of the Labour Court appears to be logical and improper because whether the Complainant was sick only from T. B. or another disease, as mentioned in the medical certificates and that because of the said illness he was unable to resume his duties and also to participate in the departmental enquiry, is yet to be finalised while deciding the Main Complainant. In substance I don't find that the Complainant while deciding the Application Exh. U-3 has made but a strong *prima facie* case to grant the relief, referred to above, which amounts to granting the Complainant a final relief, which in not appreciated by our High Court as per the rulings relied by Mr. Singh. Viewed from all the angles and on carefully going through the impugned judgment of the Labour Court, I don't find that the conclusion drawn by the Labour Court that the balance of convenience and hardship is in favour of the Complainant, is proper, because the said aspect is to be considered and scrutinised while deciding the Main Complaint. It is to be noted that if the Complainant succeeds in proving the allegation of unfair labour practice on the part of the employer and that the *exparte* enquiry was not fair and proper, in that case, the Complainant will get all the benefits including that of reinstatement with full backwages. In substance, the Judgment of the Labour Court deserves to be set aside by exercising the powers u/s. 44 of the M. R .T. U. and P. U. L. P. Act. Hence I answer the Point No. 1 in the Affirmative.

15. Before parting with the judgment, the Ld. Advocates for the parties requested that even if the Complaint is expedited, they will have no objection. Considering the points involved in the matter on hand, the Complaint in question needs to be expedited and is to be disposed of by the Labour Court by the end of June, 2002.

16. *Point No. 2.*—In view of the finding on Point No. 1, the order following :—

Order

Revision Application (ULP) No. 48 of 2002 is allowed.

The impugned order dated the 20th February 2002 passed below Exh. U-3 in Complaint (ULP) No. 511 of 2001 by the 4th Labour Court, Mumbai is set aside.

Complaint (ULP) No. 511 of 2001 is to be expedited and disposed of by the end of June 2002.

Parties and Advocates are directed to co-operate the concerned Labour Court for disposal of the Complaint. Within the time-limit stipulated hereinabove.

No order as to cost.

U. R. PATIL,
President,
Industrial Court, Maharashtra, Mumbai.

Mumbai,
dated the 20th March 2002.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai.
dated the 2nd April 2002.

BEFORE SHRI M. L. HARPALE, MEMBER,
INDUSTRIAL COURT, MUMBAI

COMPLAINT (ULP) No. 413 OF 1992.—Shri Anil Madhukar Niphadkar, B/19, Voltas Co-op. Housing Society. Shivstrshi, Kurla (E), Mumbai 400 024.–*Complainant. Versus* M/s. Guest Keen Williams Ltd. (Screw and Fasterners Division) L.B.S. Marg, Bhandup (W), Mumbai 40078.—*Respondent.*

CORAM.— Shri M. L. Harpale. Member.

Apperances.— Shri M. V. Palkar for the Complainant.

Shri Karnik for the Respondent.

Judgement

(Dictated in open Court, dated 13th March 2002)

The Complainant/employee has filed this complaint on the allegation that the Respondent/Co. has engaged in the unfair labour practices under Item 9 of Sch. IV.

2. The Complainant/employee has approached this Court with the following facts that he joined the services of the Respondent / Co. On 14th November 1980 as Electrical Foreman and he was working on the same post till his termination *vide* letter dated 16th November 1991. Enitially he was on probation for one year and then he was continued in service. It is further alleged that though the Respondent / Co. treated him as Jr. Management staff in 'B' Category, nature of his duties clearly indicate that he was a workman within the meaning of definition of 'Workman' under Section 2 (s) of the I. D. Act. It is further alleged that Respondent / Co. terminated his services by letter dated 16th November 1991 on the reason of absentisum. In fact he was sick and he was required to take rest as per advise of his doctor. He therefore sent letters from time to time for extention of sick leave. It is further alleged that the act of Respondent Co. about termination is against the Model Standing Orders. Hence, this complaint for declaration of unfair labour practices and other consequential reliefs.

3. On appearance, Mr. Gopal Shrinivasan filed an Affidavit Exh. C-2 in reply to the complaint on behalf of the Respondent Co. According to him his company has not the complaint on behalf of the Respondent Company . According to him his Company has not failed to implement any award or settlement or agreement and it is not guilty for the alleged unfair labour practices. He has further contended that the Complainant employee is not a ' Workman ' within the meaning of the defination of ' Workman ' under the I. D. Act, as the Complainant employee working as a Jr. Management Staff. Therefore, this Court has no jurisdiction to entertain this complaint. He has further contended that the Complainant employee joined his company on 15th December 1980 as a Shift Incharge in Electrical Maintenance Deptt. and after probation for one year, the Complainant employee was continued on the same post and in the same Deptt. Thereafter the Complainant employee was designated as a forman Electrical maintainance. At the time of joining the service, the Complainant employee signed the contract with his company on 15th December 1990. It is further contended that the Complainant employee was authorised to sanction leave of the workmen under him, to represent the Co. in domestic enquiries etc. It is further contended that on 18th July 1991 the Co. was transferred to the Estate Deptt. but from the next date *i.e.* 19th July 1991 he remained absent. On 24th July 1991 his Company received letter dated 21st July 1991 from Complainant employee. It was learned from the said letter the Complainant employer was under medical treatement of Dr. Anil Nazare from 19th July 1991. Thereafter his Co. sent several letters and called upon the Complainant employee either to report on duty or to approach the Co.'s Medical Officer, but in vein. Thus, the Complainant remained absent without permission. Therefore, there was no alternative than terminate services of the Complainant employee. Lastly it is prayed for dismissal of the complaint.

4. My learned predecessor framed the issues at Exh. 0-2. Then the Complainant employee examined himself only. On behalf of the Respondent Co. Shri. Padmanabhan Shrinivasan, Production Manger has deposed. After concluding of evidence of both parties the learned Advocates for both parties agreed that the evidence had been produced on the issue No. 4 which is mixed issue of law and fact. Therefore, I passed the necessary order and proceeded further to hear the parties on the issue No. 4 and the decide the same.

5. The issue to be decided as preliminary issue is as under :—

(4) Does the Respondent Co. prove that the Complainant is not an 'employee' within the meaning of the M.R.T.U. and P.U.L.P. Act, 1971 ?

6. My finding on the above issue is in the affirmative for the reasons stated below :—

Reasons

7. As stated above there is only oral evidence of Complainant and Respondent company witness Shri Padmanabhan Shrinivasan. Besides the above oral evidence, the parties have relied on documentary evidence which can be referred at the proper places herein after if required.

8. The Complainant has produced a copy of his appointment letter dated 14th November 1980 alongwith his Complaint which shows that he was appointed as a Shift Incharge in the electrical maintainance deptt of the Respondent Company, with effect from 15th December 1980, subject to 12 months probation. Admittedly he completed probation and he was confirmed in service on the same post and deptt. So far as designation of Complainant as electrical foreman is concerned it is case of the Complainant employee that since beginning he was working as Electrical Forman in Electrical Deptt. while it is case of the Respondent Co. that after confirmation in service he was redesignated as Electrical Forman. Later on the Complainant has admitted in his evidence that in 1982 he was designated as Electrical Engineer. Thus, it is clear that the Complainant employee was working as Electrical Foreman with the Respondent Co.

9. Now the main question is whether the Complainant employee was a ' Workman' within the meaning of defination under section 2(s) of the I. D. Act, 1947. The said definition is as under :—

"2(s) "Workman" means any person (including an apprentice) employed in any industry to do any manual unskilled, skilled, technical, operational, clerical or supervisory work forhire or reward whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person.

(*i*) .....

(*ii*) .....

(*iii*) Who is employed mainly in a managerial or administrative capacity, or

(*iv*) Who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

From the above defination it appears that it is necessary to establish the relationship as employer and employee. It is also necessary to see the nature of duties of the Complainant to establish the relationship between the Complainant and the Respondent Co. as employee and employer and not designation of the Complainant employee.

10. The Complainant has admitted that his salary is exceeding the limit prescribed by the defination and he was not as a member of the Recognised Union in the Respondent Co. He has admitted that he was not covered by the settlement if any between the Respondent Co. and the Recognised Union. However, he was a member of the Jr. Management Staff Association, which was not a Trade Union. Further he has admitted that he was getting salary in the first week of every month by cheque, while the workers were getting their salary in cash. He has also admitted that Respondent Co. had provided him white coat (appron) but the workers working in his department were provided with Khaki uniforms. For all these admission, it appears that he was provided some special facilities and he was not included in the class of workers for the purpose of settlement and he was a member of Jr. Management category as he had joined Jr. Management Staff Association.

11. As regards the nature of duties the Complainant has stated in his Examination-in-Chief that he was not authorised to sanction leave of the workmen working under him, to take disciplinary action against the workmen working under him, to operate the Bank Account of the Co., to issue gate passes to the workers etc. However, he has admitted in his Cross-examination that he being a Electrical foreman he was required to,—

(1) guide the workmen working under him.

(2) to report to Mr. C. S. Seth, Suptd. . *i.e.* Head of Deptt.

(3) to assigned certain jobs to the workers working in his department.

(4) to approve the shift charge form of the workers in his department ; and

(5) to recommend the leave of workmen working under him.

12. From all these admission it is clear that some workmen were working under the Complainant and he was therefore, required to perform the above duties.

13. The evidence of Mr. Padmanabhan Shrinivasan (C.W.) Shows that he was working as a Production Manager in the wire Drawing Electroplating shop. Heat Treatment and Production Services deptt. He used to approached the Complainant in case of maintainance problem and the Complainant used to depute his workmen to rectify the problem. In case of the Complicated problem the Complainant used to guide the workmen. About 55 workmen were working under the Complainant. His evidence further shows that it was the duty of the Complainant to arrange shift to allow job and to supply material to workmen working under him. His further evidence shows that the Complainant was authorised to sent material outside for major repair and authorised to recomend leave of the workmen working under him. The above evidence is not disputed or challenged by the Complainant. Even there is no suggetion on any of the point during the cross-examination of this witness. Therefore, it appears that some workmen were working under the Complainant. He used to depute the workmen, he used to guide the workmen in detecting fault and removing the same, he used to arange the shifts he used to allow the work or a jobs to the workmen, supply material to the workmen, he used to sent the material outside the Co. for major repairs and he authorised to recommend leave of workmen working under him.

14. During the cross-examination of the Complainant he was shown two leave application of Mr. V. S. Karpur and Shri R. M. Sasane, Ex. C-6 and C-7 and he has stated in his cross-examination that he put his remarks in the recommendation column of his application as “Seen” “O. K.” and he has signed under said remarks. From this facts it also shows that the Complainant was authorised to recommend the leave of the workman working under him and he recommended both these application by putting his enddorsement as “Seen” “O. K.”.

15. It further appears from the evidence of Shri Padmanabhan Shrinivasan that the Complainant was authorised to issue the gate passes. He has also stated more thing in his cross-examination that the Complainant was sending letter to some party for repairing the work. Further he has stated that he has not brought any documentary evidence that the Complainant was doing such correspondence. Thus, there is no evidence except mere words of this witness that the Complainant was authorise to issue gate passes or to make correspondence on behalf of the company.

16. It has come in the evidence of the Complainant that he was doing routine work but it appears from the evidence discussed above and the evidence of Shri Padamanabhan Shrinivasan (C.W.) that the Complainant was dealing with different problem of Electrical/shift allotment etc. Therefore, the evidence of the Complainant cannot be believed that he was doing routine work.

17. It was suggested during the cross-examination of Shri Padmanabhan Shrinivasan that he has no personal knowledge as he was working in another department. However, it appears from the evidence discussed above that this witness used to approach the Complainant's department and he knows about the Complainant's duties.

18. The Ld. Advocate for the Respondent company has relied on several cases. One is of between Shrikant Vishnu Palwankar *V/s.* Presiding Officer of First Labour Court and ors. reported in 1992 I CLR 184. In the said case the petitioner was a foreman in Job Department of the Respondent Company. It was his duty to check of blocks and materials received from other departments. Besides the same other duties were of a Supervisory in nature. He was also drawing salary exceeding the limit. On the facts Their Lordships have held that the Petitioner was not a 'Workman' within the meaning of section 2(*s*) of the I. D. Act. The Second is between Union Carbide (India) Ltd. and Ramesh Kumbla and ors. reported in *1999 I CLR 193*. In the said case the Respondent was a Supervisor and he was drawing salary more than the limit. He had power to recommend the leave and authorise overtime work and over time free meal. He enjoyed certain special privileges and benefits under the Pension Scheme and the Gratuity Scheme framed by the Petitioner Company. The said benefits were not available to "workmen". He was deputed to attend the Key Managerial Programme and indeed, attended the same. On the facts Their Lordships have held that he was not a "workman" and therefore, his Complaint of unfair labour practice was not maintainable. It is further held by Their Lordship that though the Respondent Supervisor was required to do, at times, the work himself because of its technical nature. The prominent nature of his work was of Supervisory. The third is between Instrumentation Employees' Union and Labour Court, Kozhikode reported in *1993 (I) LLN 75.* In the said case the workman was a Senior foreman and was authorised to sign confidential report of employees working under him, signatory to the settlement between management and the Union regarding marking of attendance and other cards, recommending leave applications of workmen working under him etc. On the facts the Labour Court held that the dominant work of senior foreman was supervisory in character and therefore, he was not a workman within Section 2(*s*) of the I. D. Act, 1947. Considering the facts and findings of the Labour Court. Their Lordships have held that the Labour Court is justified in recording the said findings. The forth case is between Union Carbide (India) Ltd. *V/s.* D. Samuel and ors. reported in 1998 II CLR 736. On considering the decision of the Apex Court Their Lordships have given some of the tests of deciding as to whether the person is doing Supervisory/ Managerial/ Administrative work or not? The relevant portion in para-8 on which the Ld. Advocate for the Respondent Co. has relied is as under :—

"In so far as the Apex Court is concerned, some of the tests laid down are :—

(1) Designation is not material but what is important is the nature of work.

(2) Find out the dominant purpose of employment and not any additional duties the employee may be performing.

(3) .....

(4) Has the employee power to direct or oversee the work of his subordinates.

(5) Has he power to sanction leave or recommend it; and

(6) .....

(*a*) Whether the employee can examine the quality of work and whether such work is performed in satisfactory manner or not ;

(*b*) Does the employee have powers of assigning duties and distribution of work;

(*c*) Can he indent material and distribute the same amongst the workmen;

(*d*) Even though he has no authority to grant leave does he have power to recommend leave;

(*e*) Are there persons working under him;

(*f*) Has he the power to supervise the work of men and not merely machines;

(*g*) .....

(*h*) .....

Last case is between Vimal Kumar Jain and Labour Court, Kanpur and anr. In the said case Their Lordships have held that the Petitioner was not a workman, as he was supervising the work of maintainance department in the capacity of Maintenance department in the capacity of Maintainance Engineer. He had power to grant leave, initiate disciplinary proceeding and make temporary appointments. In the light of the above observation, the facts and evidence of this case can be examined.

19. The Ld. Advocate for the complainant has also relied on two cases on the same point. One is between The Bombay Dyeing and Manufacturing Co. Ltd. and R. A. Bidoo and ors. reported in 1989 II CLR p. 248 and other is between Cricket Club of India and Baljit Shyam (Ms) reported in 1998 II LLJ 176. In the former case Their Lordships has defined words 'Supervisory Capacity' and ' Technical capacity ' and held that supervision is over men and not over machine. It is further held that a person employed in a technical capacity has to use his judgement and has to find out whether a particular work can be done in one manner or another and then he does that work in the manner in which he thinks it is better done. Since the workman in the said case did not work supervisory or technical capacity he was held to be employee as defined under the B.I.R. Act. In the later case it is held by Their Lordship that mere recommendation of leave applications would not make a supervisor.

20. In the present case it appears from the evidence discussed above that the Complainant was working as a Electrical foreman and he was getting salary exceeding the limit prescribed under the defination of 'workman'. It is further appears that as a Electrical foreman he was guiding the workmen working with him, he used to assign certain job to the workers working in his department, he used to approve the shift change forms of the workers in his department, he used to recommend the leave of the workmen, he used to guide the workmen in detecting the fault and in removing the fault, he used to arrange the shifts, he used to allot work/jobs to workmen working under him, he used to supply material to the workmen working under him, and he was authorised to sent material outside the company for major repairs. From all duties being performed by him

shows that he was doing supervision work and technical work. He was not merely recommending the leave application. But he was also performing other duties which were of supervisory in nature. It is further shows that he was doing work mainly of supervisory of nature. Therefore, in view of the observation in the cases relied on by the Ld. Advocates for the Respondent Company, the Complainant is not a 'workman' within the meaning of defination under section 2(*s*) of the I. D. Act. In the result Issue No. 4 is decided in the Affirmative.

21. Since the Complainant is not a 'workman' within the meaning of section 2(*s*) of the I. D. Act, 1947, the relationship between him and the Respondent Co. is not established. Therefore, the complaint for unfair labour practice is not maintainable. I, therefore proceed to pass the following order :—

Order

It is hereby declared that the complainant is not a 'workman' within the meaning of Section 2(s) of I.D. Act, 1947.

2. The complaint is therefore, dismissed with no order as to cost.

M. L. HARPALE,
Member,
Industrial Court, Mumbai.

Mumbai,
Dated the 13th March 2002.

S. R. ADAV,
Deputy Registrar,
Industrial Court, Maharashtra, Mumbai,
Dated the 22nd March 2002.

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